The genesis of wildlife conservation in Montana
by Joan Louise Brownell

A thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts in History
Montana State University
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Abstract:
The years between 1864, when Montana became a territory, and the establishment of a Game and Fish Commission in 1895, marked the genesis of wildlife conservation in Montana. A conservation community of pioneers, governors, legislators, and sportsmen, influenced by eastern cultural standards, appeared in Montana during the territorial and early statehood periods. Sportsmens' clubs and eastern sporting journals played pivotal roles in these formative years. The advance of civilization to the Frontier necessitated restraint against the backdrop of excessive resource exploitation stimulated by the abundance of natural resources and the ideal of progress and manifest destiny. The evolution of wildlife legislation in Montana in the nineteenth century reflected a serious concern to protect and preserve the wildlife.

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ABSTRACT

The years between 1864, when Montana became a territory, and the establishment of a Game and Fish Commission in 1895, marked the genesis of wildlife conservation in Montana. A conservation community of pioneers, governors, legislators, and sportsmen, influenced by eastern cultural standards, appeared in Montana during the territorial and early statehood periods. Sportsmens' clubs and eastern sporting journals played pivotal roles in these formative years. The advance of civilization to the Frontier necessitated restraint against the backdrop of excessive resource exploitation stimulated by the abundance of natural resources and the ideal of progress and manifest destiny. The evolution of wildlife legislation in Montana in the nineteenth century reflected a serious concern to protect and preserve the wildlife.

Chapter 1

INTRODUCTION:

MAN AND WILDLIFE IN MONTANA, A NEED FOR RESTRAINT

Charlie Russell, the renowned Montana artist, once commented that "civilization is nature's worst enemy- all wild things vanish when she comes." In the nineteenth century, an attitude of utilization and exploitation of natural resources prevailed in Montana. Economic development and growth took precedence over any environmental considerations. However, the advance of civilization also brought a social conscience to Montana. Dedicated individuals realized the necessity for restraint to protect and preserve wildlife populations and to counteract the detrimental effects of excessive hunting and unrestrained land use. The introduction of restrictive hunting measures constituted a civilizing element on the Frontier and marked the beginning of wildlife conservation in Montana.[1]

Discriminatory and limited access to wildlife populations in England influenced the fundamental principal of American wildlife law that "wild animals" belong to the people of the state. States (colonies or territories) held ownership rights to the wildlife found within their boundaries and had the right to regulate the wildlife for the common good. Montana wildlife law followed the lead of other

states and has since maintained this American fundamental right of the state and its people to manage the wildlife resource.[2]

Beginning with the first Territorial Legislature in 1864, wildlife conservation laws evolved gradually but consistently in Montana. Prior to the twentieth century, states and territories regulated and controlled the wildlife resource found within their boundaries without federal intervention. Although influenced by and imitative of eastern game laws, the Montana laws addressed regional concerns and expressed the desire by individuals to protect and preserve the wildlife resource. While the history of man's relationship with the Montana environment is predominantly one of economic exploitation, the presence of wildlife protective laws indicates that a conservation ethic existed on the Montana frontier.

Writing in 1913, Helen Fitzgerald Sanders reflected on man's relationship with the land and wildlife in Montana:

> During the past few years we have come to the realization that we have been a wasteful people in the past, not wantonly so, perhaps, because the natural resources of the country appeared to be practically limitless... We have either deliberately slain the animals of the primeval woods or made impossible the conditions of their existence.

Economic abundance stimulated the despoliation of natural resources and Montana has been described as the "plundered province." Wildlife conservation laws in Montana developed as reactions to this exploitation.[3]

The exploitative utilization of natural resources characterized

the prevailing pioneer attitude towards the environment in the nineteenth century. The "myth of superabundance" and the illusion of inexhaustible resources in the West stimulated this utilitarian attitude. Pioneers gave no thought to moderation amongst the apparent limitless wealth of natural resources. Influenced by the doctrine of Manifest Destiny, pioneers believed that progress, under the guise of exploitation, would bring civilization to the wilderness and thus saw the West as a place of opportunity.[4]

Frederick Jackson Turner's frontier thesis emphasized that the "pioneering experience" helped develop unique American characteristics such as nationalism, democracy and individualism. Turner did not consider the negative aspects of this experience, particularly man's impact on the land and its resources, called by Ray Allen Billington the "frontier heritage of waste." The economic development of Montana depended on the rapid use and exploitation of natural resources. Land-use practices, such as mining, agriculture, ranching and lumbering, altered the Montana landscape and affected wildlife populations and their habitat. Man impacted the wildlife populations not only by killing but also by crowding out the wildlife.[5]

Within the vastness of Montana, wildlife flourished. The Lewis and Clark Journals provide the first detailed record of the land and the wildlife populations in Montana and the pages are filled with references to the abundance of game. Their fascination with wildlife did not blind them from realizing the economic potential of the region with respect to the fur-bearing animals. By furnishing

information on the fur resources, Lewis and Clark helped to initiate the fur trade in the Upper Missouri and the beginnings of the excessive exploitation of the resource.[6]

The region that Lewis and Clark entered in 1805 was not without inhabitants, however. Recent archaeological investigations of prehistoric sites in Montana have revealed that early peoples have occupied this area for more than 11,000 years. The evidence of stone tools and faunal remains indicate these inhabitants led a semi-nomadic existence, subsisting on wild game and native plants. Prior to the introduction of the horse (ca. A.D. 1730), the primary communal methods for obtaining game were the drive and the surround. The surround trapped animals in a natural or man-made enclosure. The drive consisted of the movement of animals from a gathering area to a kill location, such as a game jump. Both methods have been shown to be extremely wasteful since the Indians had little control over the situation and animals could not be selectively harvested. In the pre-horse culture, slaughter of game was the means of subsistence. After the introduction of the horse, hunting techniques changed and Indians probably became more economical given the ability to be more selective in making kills.[7]

Despite certain wasteful hunting methods, the Indian, often called the first conservationist, maintained a symbiotic relationship with his environment, based on a harmony and respect for nature. His religious beliefs stressed an intimate, spiritual relationship with wildlife, and religion influenced hunting practices. The Indian did not intend to overkill, as such would have been contrary to his

existence. Historical perspective would suggest that the small-scale Indian populations, prior to the arrival of the White man, did not seriously affect the abundance of wildlife resources. After contact with the White man, however, the Indians "wasted game with gusto," influenced by the intrusion of the White man with his exploitative and materialistic tendencies.[8]

Even before Lewis and Clark had descended the Missouri in 1806, fur trappers and traders had already reached the western region in search of wealth in furs. The establishment of Manuel Lisa's Fort on the mouth of the Big Horn River signified the opening of the Upper Missouri to commercial endeavors. For several decades, rival companies, both American and Canadian, infiltrated the region and seriously decimated the streams of fur-bearing animals before the demand for furs declined in the 1830s. Although the fur trade opened up the region for exploration, this first economic development in Montana was an exploitive and extractive industry, destining Montana for a century of exploitation.[9]

Whereas the fur trade can be described as ephemeral, the discovery of gold transformed the Montana frontier. The first significant gold strike in Montana occurred at Bannack in southwestern Montana in July, 1862, and other major discoveries followed at Alder Gulch in 1863 and Last Chance Gulch in 1864. The rapid influx of miners and their various support groups into these isolated areas disturbed the habitat of wildlife and increased hunting pressure. During the winter of 1864 in Virginia City, hunters brought in "many loads of game, deer, elk and antelope" to feed the

miners. The discoverers of Last Chance Gulch knew "from the large amount of game that they were in a country which had not been prospected to any great extent."[10]

Mining "plundered and looted and left the land wasted and ravaged." Mining techniques such as hydraulic mining and dredging caused excessive erosion, impacting watersheds and subsequently the wildlife resource. The replacement of placer mining by quartz or hard rock mining further stimulated the economic development of Montana, accompanied by the recurring theme of adversely impacting wildlife habitat and populations.[11]

Quartz mining required timbers and the lumbering industry expanded as a result. Sawmills provided milled timbers for the mines and lumber for the growing urban communities. The industry denuded the hillsides to supply fuel to the smelters and "by 1888, Anaconda alone was using 40,000 feet of timber a day in the mines." Uncontrolled, excessive logging destroyed the natural cover and reduced the historic range of some wildlife species.[12]

Agriculture in Montana also evolved because of the mining frontier and became the "mainstay of the economic development of the West." As miners searched for gold, others discovered the fertile western valleys and began farming to feed the thriving mining camps. Cultivation by settlers disturbed wildlife habitat, and certain agricultural techniques, such as irrigation, fencing and intensive plowing, adversely affected wildlife populations.[13]

The growth of agriculture in the fertile, well-irrigated western valleys soon came into conflict with the cattle herds introduced into

these valleys by the 1860s. Stockmen advanced onto the open ranges in central Montana in the 1870s and, spurred by outside investments, cattle grazed over most of the eastern part of the Territory by the 1880s. Land that had historically supported an abundance of wildlife metamorphosed into cattle ranges. The exploitation of the open range by overgrazing and overcrowding culminated in the devastation of the cattle industry in the "Hard Winter" of 1886-1887.[14]

The unrestrained growth of the cattle industry coincided with the intensive exploitation of large game. Hide hunting had persisted since the fur trade era, but intensified in the 1870s with the increased demand for hides to make leather. The slaughter of the buffalo during this period personified all of the problems that afflicted big game of North America and illustrated man's destructive effect on his environment in the nineteenth century. Augmented by the introduction of breach-loading and repeating rifles and brass cartridges, the indiscriminate slaughter by professional hunters and so-called sportsmen devastated a population once estimated at 60 million. Forest and Stream, the influential eastern sporting journal, noted that:

> the rapid development of the West threatens the extinction of the buffalo and there is no romance in Western sentiment that considers his preservation. Contented that the animal does not fit into practical American civilization and skin is the only value.[15]

Many viewed the extermination of the buffalo as unavoidable

with the onslaught of civilization and the coming of the Industrial Revolution to the Montana Frontier. As the symbol of industrialization on the frontier, the railroad connected the West to the East, stimulated the development of natural resources and opened access to national and international markets. The presence of the railroad encouraged settlement and growth and the settling of the country impacted the wildlife populations. The advent of the railroad also increased hunting pressures on wildlife, from initial construction crews to the foreign and eastern sportsmen who traveled west to hunt.[16]

Thoughtless destructiveness and wastefulness characterized economic development and growth in Montana in the nineteenth century. This utilitarian attitude disrupted wildlife populations significantly. However, certain individuals, pioneers and sportsmen appreciated the amenities and aesthetics of nature, even though such values conflicted with the view held of nature as an obstacle to progress. These individuals who sought to protect wildlife provided the impetus for the introduction of wildlife conservation laws in Montana, beginning with the first Montana legislature in 1864.

ENDNOTES

[1]Charlie Russell quoted in E.S. Paxson, Jr., E.S. Paxson, Frontier Artist (Boulder, Colorado: Pruett Publishing Co., 1984), p. 87.

[2]See Thomas A. Lund, American Wildlife Law (Berkeley: University of California Press, 1980) for a study of American wildlife law.

[3]Helen F. Sanders, A History of Montana 3 vols. (Chicago: The Lewis Publishing Company, 1913), 1: 690; see David M. Potter's People of Plenty: Economic Abundance and the American Character (Chicago: University of Chicago Press, 1954) for a discussion on the concept of economic abundance; The term "plundered province" is from Bernard Devoto's "The West: A Plundered Province" Harper's Monthly Magazine (August 1934), pp. 355-364.

[4]Roderick Nash, Wilderness and the American Mind (New Haven: Yale University Press, 1967) and Henry Nash Smith, Virgin Land the American West as Symbol and Myth (New York: Vintage Books, 1950) provide excellent studies of man's attitudes towards nature; Stewart L. Udall coined the term "myth of superabundance" in The Quiet Crisis (New York: Holt, Rinehart and Winston, 1963).

[5]See Ray Allen Billington's America's Frontier Heritage (New York: Holt, Rinehart and Winston, 1963) for an indepth study of the Turner thesis; Billington also comments on the wastefulness of man in "Full Speed Ahead and Damn the Tomorrows - Our Frontier Heritage of Waste," American Heritage 29 (December 1977): 6-12.

[6]See Reuben G. Thwaites, ed., Original Journals of the Lewis and

Clark Expedition, 1804-1806 8 vols. (New York: Dodd, Mead, 1904-1905); John Logan Allen, in his Passage through the Garden- Lewis and Clark and the Image of the American Northwest (Urbana: University of Illinois Press, 1975), contends that Lewis and Clark carried a preconceived notion of the West as the garden of the world, perpetuated by the abundance of wildlife. However, in Montana, "the times of plenty in the garden were over and the times of hardships were to begin..." (p. 265).

[7]George Frison's Prehistoric Hunters of the High Plains (New York: Academic Press, Inc.,1978) is a standard reference on Northwestern Plains archaeology; for archaeological studies of communal hunting methods, see Leslie B. Davis and Michael Wilson, eds. "Bison Procurement and Utilization: A Symposium." Plains Anthropologist, Memoir No. 14 (1978).

[8]Most ethnographic accounts refer to this symbiotic relationship; Calvin Martin's Keepers of the Game: Indian-Animal Relationships and the Fur Trade (Berkeley: University of California Press, 1978) gives a defense of the Indians participation in the fur trade.

[9]For histories on the Montana fur trade, see Paul C. Phillips, "The Fur Trade in Montana," in A History of Montana 3 vols., ed. Merrill G. Burlingame and K. Ross Toole (New York: Lewis Publishing Co., 1957), vol. 1., pp. 71-98 and chapter 3 in Merrill G. Burlingame's The Montana Frontier (Helena: State Publishing Co., 1942); Hiram M. Chittenden's The American Fur Trade of the Far West 3 vols. (New York: Francis P. Harper, 1902) is the standard reference on the fur trade.

[10]For general histories on the Montana mining frontier, see

Burlingame's The Montana Frontier, chapters 4 and 5, and Michael P. Malone and Richard B. Roeder's A History of Two Centuries (Seattle: University of Washington Press, 1976), chapter 4; George A. Bruffey, Eighty-one Years in the West (Butte: The Butte Miner Co., 1925), p. 40; L. L. Calloway, "Montana's Game in Vigilante Days" Montana Wildlife 3 (January 1931):18.

[11]Clark Spence, Montana A Bicentennial History (New York: W.W. Norton and Company, Inc., 1978), p. 37.

[12]K. Ross Toole, Montana An Uncommon Land (Norman: University of Oklahoma Press, 1959), p. 159.

[13]Gilbert C. Fite, "The American West of Farmers and Stockman," in Historians and the American West, ed. Michael P. Malone (Lincoln: University of Nebraska Press, 1983), p. 209. For the development of early Montana agriculture see Burlingame, The Montana Frontier, chapter 15, and Robert G. Dunbar, "Agriculture" in A History of Montana 3 vols., ed. Merrill G. Burlingame and K. Ross Toole (New York: Lewis Publishing Co., 1957), vol. 1, chapter 12.

[14]For general histories of the cattle industry in Montana, see Burlingame, The Montana Frontier, chapter 12 and Malone and Roeder, Montana, A History of Two Centuries, chapter 12; see also Robert S. Fletcher, "The End of the Open Range in Eastern Montana," Mississippi Valley Historical Review 16 (September 1929):188-211 and Ray H. Mattison, "The Hard Winter and the Range Cattle Business," Montana The Magazine of Western History 1 (October 1951): 5-22.

[15]See William T. Hornaday, "The Extermination of the American Bison," in Report of the United States National Museum For 1887 (Washington, D.C: Government Printing Office, 1896) pp. 367-548 for a detailed examination of the buffalo extermination; Forest and Stream, January 22, 1882.

[16]For a general history of railroads in Montana, see Malone and Roeder, Montana, A History of Two Centuries, chapter 8.

Chapter 2

SIGNIFICANT PROTECTIVE WILDLIFE LEGISLATION IN MONTANA: 1864-1895

In December, 1864, the first Territorial Legislature convened at Bannack, in the southwestern portion of the newly established Montana Territory. This legislature faced many problems during its first session, problems that ranged from organizing the government to appeasing special interests. The legislators also addressed other concerns including game conservation.[1]

James Stuart, a well-known frontiersman representing Deer Lodge County, introduced a bill entitled "An Act in Relation to Trout Fishing." This bill became the first wildlife conservation law in the new Territory. Moving quickly through the House, the bill passed unanimously the same day it was introduced. The Council referred the bill to its Committee on Ways and Means. This committee, composed of two attorneys from Madison and Beaverhead counties, recommended the bill after some minor changes. The Council passed the bill by a unanimous vote, and Governor Sidney Edgerton approved it on February, 1864.[2]

This law designated that fishing tackle "consisting of rod or pole, line and hook be the only lawful way that trout can be caught in any of the streams in the Territory." It prohibited the

construction of dams, the use of seines or nets and the use of drugs or poisons "intending to catch, kill or destroy any species of fish." The penalty could be a fine of from $50 to $200, the funds to be divided equally between the local county school and the informant.[3]

Such a law seems premature for a Territory with a population consisting primarily of placer miners. Fish and game provided an abundant, convenient and often the only food source for early prospectors. After mining camps developed and gained substantial populations, subsistence hunting declined. The majority of miners concentrated on extracting gold from the hillsides and relied on hunters to supply the camp with wild game and fish. One hunter wrote in 1863 that "this being Sunday, all the miners are down for supplies; sold all the deer meat to them." Advertisements in the Montana Post and other territorial newspapers indicated the availability of game and fish to the point of "glutting the markets." Hunters obtained fish easily with the use of seines and dynamite, often taking them "by the wagonload."[4]

This wasteful practice undoubtedly motivated James Stuart to introduce his bill to protect the fisheries. An avid hunter and fisherman himself, he reacted personally against such wastefulness. The first conservation law in the Territory resulted from his expressed concern combined with the consensus of the legislators.[5]

The trout law was not without its opponents and, for the remainder of the decade, certain legislators tried repeatedly to repeal the Act. Initiated by private interests and often accompanied by petitions, several bills requested permission to use seines, traps

or dams in certain rivers of the Territory. One group of petitioners who supported the erection of a fish trap on Rock Creek voiced the commercial perspective regarding use of fisheries in the Territory:

> That in our best opinion... [a fish trap] would aid in Supplying Thousands of Whites with that desirable article Trout and no one damaged by it As the Trout comes and goes annually to & from this creek untouched by man.

Despite such opinions, the trout law remained on the statutes, constituting the only wildlife conservation law until 1869.[6]

Other wildlife conservation measures evolved gradually in the new Territory. In 1869, during the Sixth Territorial Legislature, Nathaniel Boswell of Deer Lodge County introduced a bill in the House to prohibit the killing of any "antelope, deer, elk, mountain sheep, moose and any grouse, prairie chicken, pheasant, foolhen or quail between the 1st of March and the 15th of August." The reaction to the bill was less than favorable. Members of both Houses immediately wanted to decimate the bill by providing protection to the quail only. Nevertheless, each House formed a special committee to consider the bill. The House eventually passed a substitute bill by a vote of 11 to 6. The Council Committee struck out protection for large game and the bill carried in the Council by a vote of 8 to 2, subsequently receiving the Governor's approval.[7]

It is not surprising that the legislature hesitated and then failed to pass a restrictive measure intended to regulate the hunting of wild game. They certainly did not want to be responsible for imposing any hunting restrictions on their constituents, and a large

percentage of the legislators possibly questioned the rationale behind it, believing in the abundance of the wildlife resource as well as man's inalienable right to hunt and fish. The vast herds of buffalo and other wildlife still extant in the Territory made it difficult to imagine any imminent threats to their numbers.

Most legislators, however, should have been familiar with hunting restrictions prior to settling in Montana. Closed seasons had become a common protective measure in the United States since the colonial period. Massachusetts had imposed the first closed season in 1694 to protect its deer population. The concept underlying the closed season was to protect the species during its gestation period, thus ensuring its propagation. Protective measures such as hunting restrictions gradually diffused westward, usually representing the first step towards game conservation in the states and territories.[8]

Although large game received no protection, the final bill that passed during the sixth session provided for a closed season for game birds and prohibited the killing of any partridge or quail within the Territory for a period of three years. The importation of foreign game birds into North America had just begun and the first known introduction of quail into Montana Territory occurred in the mid-1870s. It appears that a special interest group used its influence to pass a bill in preparation for the arrival of certain exotic species.[9]

Protection only for game birds and fish did not satisfy proponents of wildlife conservation in the Territory. In 1871, Granville Stuart, one of the strongest advocates for wildlife protection, took the initiative in the Seventh Legislative Assembly in

Virginia City. He sponsored a bill entitled "An Act in Relation to the killing of Game and the catching of Fish." The Council passed the bill unanimously after it returned unchanged from the Committee on Indian Affairs. The House Committee on Territorial Affairs made some amendments, but the bill carried by a vote of 13 to 7. Governor Benjamin Franklin Potts approved the bill in January, 1872.[10]

The bill codified all of the various wildlife protective measures into one general law covering large game, game birds and fish. The most significant clause in this wildlife law protected, by a closed season, the "Mountain buffalo, moose, elk, black-tailed deer, white-tailed deer, mountain sheep, white Rocky Mountain goat, antelope or hare, between the 1st of February to the 15th of August." Influenced by laws adopted in other states and territories, the acceptance of the need for hunting restrictions by legislators possibly indicated their growing recognition of the depleting wildlife resources.[11]

The law also protected the partridge, quail and "prairie chicken, robin, meadow lark, thrush, goldfinch or any other of the small birds commonly known as song birds." This feature of the new wildlife law may seem out of place for a frontier territory, but there are several possible explanations for its passage. A consideration for "song birds" reflected refinement and sensitivity not usually attributed to a frontier society. But Granville Stuart, the bill's sponsor, was not made from the same mold as most pioneers and numerous notations in his letters and journals reflect his personal aesthetics and his love for nature.[12]

Several destructive practices occurring in the later half of the nineteenth century probably repulsed people with sensitivities similar to Granville Stuart. The plumage and bodies of birds began to increasingly adorn women's hats and dresses in the east and on the Frontier. Although the national outrage against this practice did not gain recognition until the 1880s, the devastating effects must have been common knowledge. Another reason for protecting "song birds" possibly responded to the influx of hardrock miners into the Territory. Some ethnic groups such as the Italians feasted on robins and other small birds, a habit that undoubtedly would have upset Stuart.[13]

The importance of song birds to agriculture also presented a more tangible reason for protection. In the irrigated valleys of western Montana, agriculture was an important economic asset to the Territory. As the importance of insectivorous birds to agriculture became more accepted, farmers began to support legislation protecting certain bird species.[14]

Several years and two legislative sessions elapsed before wildlife conservation again received serious attention. In 1876, at the Ninth Legislative Session held at the new territorial capital in Helena, Granville Stuart decided to revise his 1872 law and introduced a new bill "to protect the game and fish in the Territory of Montana." The Helena Independent saw the bill as an "important measure which should receive the earnest attention of the legislature."[15]

The Legislature altered the bill several times before it met with

final approval. The House Committee on Judiciary, composed of Stuart and two attorneys, added amendments to strengthen the bill and recommended its passage. On the floor of the House, Edward G. Brooke, a rancher from Jefferson County, added two amendments for protecting beavers and permitting seining in certain rivers in the Territory. The bill, as amended, carried by a large majority in the House with a vote of 28 to 3. The Council made some other revisions to the bill, but it passed by a vote of 8 to 4. Governor Benjamin Franklin Potts approved the bill in February, 1876.[16]

This new wildlife law expanded the 1872 law "to protect game, fur-bearing animals and fish." While maintaining the hunting restrictions from the 1872 law, the 1876 wildlife act provided limited protection for fur-bearing animals and migratory waterfowl. The law protected beaver, otter, martin and fisher from the 1st of April to the 1st of August, species that had been previously ignored in legislation and whose populations had been seriously exploited and depleted by the fur trade. The beaver even received special attention that made it illegal to kill them in the Territory except by private landowners. Known by some as the "water farmer of the plains," the beaver, by conserving the water supply in the semi-arid West, could be beneficial to agriculture. However, his destructive trait of flooding areas stimulated an argument favoring private property rights. Whereas Brooke's amendment protected beavers from being trapped, shot or killed "in any field or inclosure in the Territory," the Council Committee on Immigration permitted landowners to catch or kill beavers on their own land.[17]

The 1876 wildlife law also contained other unique provisions. Migratory waterfowl, being "any varieties of wild geese and ducks," could not be shot between the 15th of May and the 10th of August. This clause was particularly interesting because the detrimental effects of spring shooting did not gain national attention until the 1880s and 1890s. As with previous provisions, it reflected the influence of a special-interest group that included Stuart who enjoyed the sport of duck hunting, but recognized the need for some control.[18]

The most significant provision in this new wildlife law prohibited the killing of animals "for the purpose of procuring the hide only" and not making "use of the carcass...for food, for himself or for the purpose of selling the same to others for food." Had it been enforced, this law could have had monumental consequences on the fur trade in the Territory. By the 1870s, hide hunting had intensified after a company in Pennsylvania discovered a way to make leather from buffalo hides. In 1876 alone, I.G. Baker and Company of Fort Benton reported the shipment of 75,000 robes.[19]

The legislators did not intend to impede this practice, since they recognized the importance of hide hunting to the economic development of the Territory. However, several external stimuli influenced the passage of the law anyway. Territories such as Wyoming and Colorado had recently put similar restrictive clauses on their statutes and the Montana legislators followed suit. The federal government had also endeavored to take some action concerning large game (particularly the buffalo). Between 1871 and 1876,

Congress made several serious, but futile attempts to protect the buffalo.[20]

This territorial provision against hide hunting probably represented an assertion by legislators of their right to protect the wildlife within their territorial boundaries without federal intervention. The law also attempted to control the Indians within the Territory. Undoubtedly, the federal bills failed due to the Indian problem. Extermination of the buffalo was a means of subjugating the Indians and to confine them to reservations.[21]

The devastation of the once-vast buffalo herds epitomized man's exploitative character on the Frontier. In Montana Territory, depredations continued into the 1880s despite legislative efforts by certain individuals attempting to protect the buffalo from annihilation. In 1879, Edward G. Brooke sponsored a bill "to protect the buffalo in the Counties of Lewis and Clarke, Jefferson, and Deer Lodge." The bill had no difficulty in either house, passing by a large margin in the House and unanimously in the Council. The Act protected the buffalo for a period of ten years in four counties of the Territory, including Madison County. Brooke, an early Montana pioneer and an influential rancher from Whitehall, was not necessarily worried over the slaughter accelerating in the plains, but concerned about a small herd of buffalo located in 'Whitetail Park' in Jefferson County. This herd became known as "Major Brooke's cattle" after the passage of his bill.[22]

This law gave protection to buffalo in some of the western mountainous counties, but not in the eastern portion of the Territory

where the slaughter intensified. In 1864, Idaho established a closed season for buffalo which was of little effect since few buffalo roamed that far west. The highest praise for the Montana Act came from the Superintendent of Yellowstone National Park. P.W. Norris, experiencing difficulty in preventing the slaughter of wildlife in the Park and failing to receive federal assistance to discourage such practices, asserted this law as a shining example of wildlife protection to the Department of the Interior:

> If the sagacious leading gentlemen of that thriving territory deemed it necessary and feasible to thus supplement ordinary stringent game laws to preserve a remnant of the buffalo and bison that so recently grazed in countless millions..., should not we make systematic efforts for their preservation in the park?

Unfortunately, none of the counties included in the Act were contiguous with the Park, and excessive hunting inside and outside the boundaries of the Park continued. Only in the last Montana Territorial Legislature in 1889 did the buffalo receive total protection by passage of a law making it illegal "to shoot" any bison or buffalo for ten years.[23]

Wildlife legislation competed with industries such as the hide trade that were important to the development of the Territory. Legislators acted with caution in passing these laws, especially as they pertained to the larger game animals. Fisheries measures, however, seemed to be less controversial. In Montana, as in most states and territories, legislators persistently initiated efforts to both improve and to protect the fisheries resource.[24]

Since 1864, the statutes designated that the only legal way to fish in the Territory was with hook, line and pole and the law prohibited seining and other methods of procuring fish. In 1876, the Legislature amended the law for the first time. At the Ninth Legislative Assembly, an amendment sponsored by Edward G. Brooke of Jefferson County allowed seining "in the Missouri and Jefferson Rivers, the Beaverhead River up to Beaverhead Rock and North Boulder Creek for 10 miles above its' mouth." Another fisheries amendment prohibited any "transportation unit" to transport or sell any fish known to be illegally caught. This provision attempted to restrict the marketing of fish in and out of the Territory and compensated for the change in policy regarding seining. Allowances for commercial endeavors necessitated modifications of the fish law to protect the resource.[25]

While most praised the excellent fishing opportunities in the Territory, others felt deprived of salmon, so abundant in the Northwest, but not in Montana Territory. In 1876, the Ninth Legislative Assembly sent Congress a joint memorial stating that, because of "certain obstructions on the Columbia River, Montana Territory is deprived of salmon." Requesting $15,000 to clear the obstruction in Washington Territory, the legislators felt that "the subject of fish culture should receive substantial encouragement" from the government and the western territories deserved "special attention."[26]

Receiving no immediate response from Congress, Washington J. McCormick, in the 1879 Legislature, presented a bill "to promote

fishing interests" in the Territory. McCormick was the most ardent advocate for bringing salmon to Montana. He held an "imposing" position in Missoula, being a lawyer by profession and very involved with ranching and real estate. Since the salmon would ascend into the Clark Fork River, the economy of Missoula County would benefit by its appearance. Although the bill failed in this session, it passed during the Extraordinary Session of 1879 when reintroduced by McCormick.[27]

"Let us have salmon," cried the Helena Independent. The Act appropriated $1,000 to remove a "portion of the Great Falls on the Clarke's Fork" or the Pend'Orielle River after the governor received permission from Washington Territory. Complications arose, however, and, in 1881, the Council asked Governor Potts "as to what, if anything, has been done" regarding this issue? His disappointing reply stated that the falls are "situated upon the public domain and that Congress is the only authority to grant Montana permission to improve said river."[28]

The Council persisted, however, and in the same session prepared another joint memorial. This memorial asked Congress for appropriations to remove the falls that prevented the salmon from entering the streams of the Territory, stressing that the removal of the obstruction is "an object of great solicitude to the people of the Territory" and the opening "would be of inestimable value to 20,000 citizens." Congress again failed to respond. In 1883, Governor John Schuyler Crosby, acting on a Council joint resolution, wrote to the United States Fish Commission regarding the salmon problem. Such

requests and legislative efforts to remove the obstruction and bring salmon to Montana continued until 1895, but to no avail.[29]

In 1883, in the same letter to the Fish Commissioner, Governor Crosby asked for development of fisheries in the Territory by stocking the streams with fish. That same year, Granville Stuart had unsuccessfully sponsored a bill "to provide for a fish-breeding establishment." The stocking of the waters of the Territory began early, usually by private individuals, and probably occurred frequently. A provision in the 1883 revised game law augmented this practice by permitting the use of seines to take fish to transplant or stock other streams. As Montana's population grew and areas became settled, the stocking of streams and lakes became popular and afforded both food and sport.[30]

Development and exploitation of natural resources invariably paralleled settlement. The large number of sawmills in the Territory in the 1880s reflected intensive lumbering operations, and most sawmills depended on hydropower. The adverse effect of such sawmills on adjacent streams and fish habitat could not be ignored, especially when some "ladies and gentlemen went to the West Gallatin on a fishing excursion but found stream to contain a large amount of floating sawdust."[31]

In 1881, Armstead H. Mitchell, a physician/surgeon who had lived in Deer Lodge since 1865 and represented Deer Lodge, Beaverhead and Missoula counties, sponsored a bill to alleviate the problem of sawdust in the streams. His bill carried in both Houses with little difficulty, and the law, commendable but unrealistic,

mandated that sawmill operations must prevent sawdust "from mingling with the waters of any stream [containing fish] to the injury or detriment of the fish." Sawdust from sawmills, however, constituted only a part of the problem. Extensive logging operations destroyed entire watersheds and fisheries habitat. Unfortunately, the importance and power of the timber industry to Montana's economic well being took precedence over any protective measures.[32]

In 1885, some legislators tried to strengthen Mitchell's 1881 Act by prohibiting the "mingling" of sawdust in any stream in the Territory. The bill passed although the House Committee on Agriculture and Manufactures wanted to postpone the bill:

> While the committee are unanimous in the belief that death from too much sawdust has partially depleted some of the lesser streams of the territory of the finny tribes, we still believe that the bill is too sweeping in its provisions; that it would be more harmful to the lumber industry than beneficial to fish interests.[33]

The timber industry, of course, was not alone in adversely impacting fisheries populations. The development of agriculture in Montana had detrimental effects as well, primarily from increased dependence on irrigation. Fish entered irrigation ditches through open head gates and subsequently died in the ditches when the water diffused into the fields. Mining ditches provided the same negative consequences. The Grand Jury in Bozeman recognized the problem as early as 1887, stating that "among the greatest cause of extermination of fish from our waters are the irrigating ditches... an

evil that demands correction."[34]

In 1889, at the Sixteenth Legislative Session, Dr. Hasket D. Pickman representing Beaverhead County attempted to alleviate the problem by introducing a bill related to fish screens and water ditches. A House Committee, however, composed of representatives from five western counties, did not recommend passage in "connection with mining and farming interest in Montana" and the bill failed. Not until 1893 did a fish and game Act include a fisheries clause mandating that "all ditches or drains leading from natural streams" be protected at the junction of the ditch and stream by a grate not over 1/2 inch and to be installed by the 1st of September and removed the 1st of March. A second clause stipulated that all dams, existing or proposed, must have a fishway or ladder so as not to impede the movement of fish. In the previous session, the Legislature had allowed dams on the Jefferson River, and the resulting detrimental effect on the fisheries had apparently demanded some remedial action.[35]

The enactment of protective laws did not guarantee enforcement, however, and the underlying limitation of wildlife conservation laws was inadequate enforcement. As one Montanan lamented, "I do not consider they [the laws] are worth the paper they are printed on, for the simple reason that apparently no one is appointed to see that they are carried out." Although Montana laws improved over the years and penalties became more stringent, little "machinery or money" were available for "carrying out" the intent of the laws during the territorial period.[36]

Long before, the British colonies had recognized that the enforcement of wildlife laws was the weak link, but they rarely addressed the problem. Massachusetts, however, did appoint a deer warden in 1739. After the American Revolution, wildlife conservation laws evolved gradually in states and territories, but enforcement was usually ineffective. Fish commissions generally instituted the first regulatory efforts and these commissions, such as the California and New Hampshire Commissions in 1878, eventually considered other wildlife issues. In 1852, Maine hired the first game wardens, called Moose wardens, who became the prototype for other states. The first salaried game wardens, however, first appeared in 1887 in Michigan, Minnesota and Wisconsin.[37]

The vastness of Montana Territory increased the difficulty in enforcing wildlife laws, and the Legislature was particularly lax regarding enforcement. The initial 1864 trout law unrealistically depended on local informants and local magistrates. The Legislature later gave the responsibility of investigating any infractions of the law and enforcement to the Grand Jury. None of these methods proved successful and there is only only instance where a Grand Jury indicted individuals for seining illegally on the Blackfoot River.[38]

While the Territorial Legislature continued to strengthen the protective laws and increase penalties, all bills attempting to provide for game wardens failed. Governor John Schuyler Crosby, in his governor's message, advised the 1883 Legislature to "authorize the Executive to appoint a salaried game warden for each county." The legislators ignored his suggestion. In the 1885 Legislative

Assembly, Jay Wells of Beaverhead County, who had come to Montana after five years as a trapper in Alaska, introduced a bill "relating to the appointment of game wardens." Although placed on the table in the last days of the session, the bill initiated a serious effort to create the position of warden. During the next session, John E. Rickards of Silver Bow County sponsored a Council bill to provide for the "better protection of game and fish and for the creation of the office of Game and Fish Detective." More than 168 citizens of Silver Bow County signed a petition supporting the bill, stating "that the conditions of affairs... urgently calls for such an enactment." Unfortunately, the Council members disagreed and postponed the bill.[39]

The Silver Bow delegation persisted and, in the last Territorial Legislature in 1889, Edgar Congdon introduced a bill in the House "for the better protection of game and fish and for the creation of game and fish warden." Influenced by Governor Preston Leslie's address to the Legislature where he asked them to "scrutinize" the wildlife laws and "tighten the bands" against waste, legislators seriously considered the bill. The report of the Committee of Towns, Counties and Highways recommended the appointment of a "suitable person" in each county to enforce the laws. After the House Committee on Territorial Affairs made some changes, the bill passed unanimously. The Council also amended the bill and it carried by a vote of 10 to 1.[40]

Each county of the Territory could now appoint a game and fish warden to investigate violations of the law and prosecute

infractions. The County Commissioners, after receiving a petition of at least 100 "resident taxpayers," would decide if "the best interests of the county" demanded a warden. If appointed, the warden would serve at least three months and not more than 12 months and his compensation could not be more than $100 per month drawn from the county general fund.[41]

Only four out of 24 counties (Silver Bow, Gallatin, Lewis and Clark and Fergus) had appointed game wardens by the turn of the century. Most counties set the salary so low that the "proper kind of man" was probably not interested, demonstrating the lack of serious concern by county commissioners for wildlife protection. The evident failure of this provision stimulated several legislators during the Third State Legislature in 1893 to introduce bills creating game and fish commissions and game and fish wardens. None of the bills, however, reached a third reading in either house, although the Game and Fish Committees did recommend the bills. The failure of these bills possibly related to Governor John E. Rickards' message to the 1893 State Legislature. While recognizing the ineffectiveness of game laws, he was unable to endorse a state game warden system because of other constraints on the treasury. Two years later, in his 1895 governor's message, Rickards compensated for his previous position by calling for a "mandatory" appointment of game wardens in the counties to secure enforcement "in every locality."[42]

The acceptance of wildlife conservation as a legitimate concern crystallized in the Fourth State Legislature in 1895. The legislators considered eleven bills relating to wildlife protection. Three bills

became law, introducing a new era for wildlife protection in Montana. The most important measure established a Board of Game and Fish Commissioners. Representative Edward P. Chandler of Fergus County introduced the bill in the Senate. After the game and fish committee's in both Houses made revisions, the bill passed in the House by a vote of 15 to 4 and in the Senate by 31 to 11. The bill became law when Governor Rickards signed his approval.[43]

The law "created a Board... composed of 3 members appointed by the Governor for 3 years and serving without compensation." The duties were "to secure through and by agents and subordinates the enforcement of all laws of the State for the preservation and propagation and protection of game and fish in the State." The Board appointed a Game Warden to serve as secretary and business agent and "to examine into and inquire" about violations of the wildlife laws. Another law, sponsored by Edwin S. Booth from Silver Bow County, amended the 1889 law related to county game and fish wardens. Easily passed in both Houses, this law made it mandatory for County Commissioners to appoint a Game and Fish Warden when presented a petition signed by 100 residents of that county.[44]

The 1895 Legislature also initiated another significant wildlife measure. This bill, presented by James Sligh, a physician from Granite County, introduced the concept of game bag limitation. Difficulties in both Houses hampered its passage, indicating that the original draft might have been too restrictive. The Senate Game and Fish Committee returned a substitute bill, and later submitted a substitute for the substitute after receiving the bill twice. Finally,

the Senate passed the bill unanimously. The House Game and Fish Committee made a minor adjustment on the dates of the closed seasons and the House passed the bill by a vote of 45 to 6. However, the Senate did not concur with House changes. The assembly then organized a Committee of Conference, formulated a compromise and the bill became law.[45]

Accompanied by stringent fines, the revised wildlife law protected most animals with a closed season and prohibited in a single open season the killing by any individual of more than "2 bull moose or 3 bull elks, 1 hundred grouse or prairie chickens." One could only legally kill "8 deer, 8 mountain sheep, 8 Rocky Mountain goats or 8 antelopes." Game birds could not be killed for "speculation, market or sale."[46]

Where the territorial period saw the gradual evolution of wildlife conservation laws, the advent of statehood brought a serious and concerted effort by legislators to make wildlife conservation laws precise and exacting. The most significant innovation in the early years of the State Legislature was the creation of fish and game committees. Prior to statehood, both houses referred wildlife bills to various miscellaneous committees or special elected committees to report on a bill. In 1891, the Senate established the first standing "game and fish" committee, although the committee did not consider any bills that year. In 1893, during the Third Legislative Assembly, both the Senate and the House had functioning game and fish committees that reviewed and made recommendations regarding wildlife measures.[47]

The existence of the game and fish committees, combined with the creation of the Game and Fish Commission in 1895, marked a significant transition for wildlife conservation in Montana. The traditional pioneer assumption of wildlife abundance faded, replaced by a growing awareness of the diminishing wildlife resource. The disappearance of the frontier necessitated action by legislators to provide serious wildlife laws to protect and preserve this aspect of the frontier heritage.

The wildlife conservation laws passed in the territorial and early statehood periods in Montana strongly reflect an early and genuine concern for the protection of wildlife. A cursory study of the sponsors of wildlife bills in the territorial period shows that the majority of the legislators had lived in Montana since the 1860s and had established themselves in their communities. Generally, irregardless of their diverse backgrounds and occupations, all legislators gave serious consideration to wildlife conservation measures presented to the assemblies:

> game laws, whatever their ultimate merits as instruments of wildlife protection, were hardly frivolous exercises of legislative authority. They were introduced, debated, amended and enacted in the interest of certain legislators or in the interest of those with legislative attention.[48]

Admittedly ineffective, the laws still represented the awareness and determination of legislators, governors, sportsmen and private citizens to persist in the struggle for adequate wildlife preservation.

ENDNOTES

[1]The most comprehensive study of the Montana territorial government is Clark D. Spence, Territorial Politics and Government in Montana: 1864-1889 (Urbana: University of Illinois Press, 1975).

[2]H.B. No. 104, House Journal of the First Session of the Legislative Assembly of the Territory of Montana 1864-1865, (Virginia City: D.W. Tilton & Co., 1866) pp. 142, 174 [Hereafter cited House Journal with appropriate session and year]; H.B. No.104, Council Journal of the First Session of the Legislative Assembly of the Territory of Montana 1864-1865, (Virginia City: D.W. Tilton & Co, 1866), pp. 202-204 [Hereafter cited Council Journal with appropriate session and year]; During the first session, Eramus D. Leavitt also gave notice for a bill entitled "for the preservation of fish and game" Council Journal, p. 23; and Wila Huffaker introduced a bill for the "protection of wild game." Huffaker's bill passed unanimously in the House but the Council laid the bill on the table; H.B. No. 21, House Journal, pp. 44, 100.

[3]An Act in Relation to Trout Fishing, February 2, 1865, Acts, Resolutions and Memorials of the Territory of Montana Passed By the First Legislative Assembly, (Virginia City: D.W. Tilton & Co., 1866), p. 407; [Hereafter cited Laws with appropriate session and year.]

[4]The adverse impact of mining on wildlife habitat and populations is introduced in the preceding chapter; Granville Stuart, Forty Years on the Frontier, as Seen in the Journals and Reminiscences of Granville Stuart, Gold-Miner, Trader, Merchant, Rancher and Politician, 2 vols., ed. Paul C. Phillips, (Cleveland: Arthur H. Clark Co., 1925), vol. 1, p. 250; Montana Post, February 11, 1865; Granville Stuart, Montana As It Is; being a general description of its resources, both mineral and agricultural, including a complete descriptionof the face of the country, its climate, etc. (New York: C.S. Wetcott & Co., 1865), p. 60.

[5]James Stuart's concern for wildlife is discussed further in the following chapter.

[6]H.B. No. 42, House Journal of the Second Session,1866, (Helena: Wilkinson and Ronan, 1870), pp. 64,67,76,80-81,92,94-95; H.B. No. 42, Council Journal of the Second Session, 1866, (Helena: Wilkinson and Ronan, 1870), p. 237; H. B. No. 1, House Journal of the Third Session, 1866, (Helena: Wilkinson and Ronan, 1866), pp. 14,32,34,80,95; H.B. No. 4, House Journal of the Fifth Session, 1868-1869 (Helena: Montana Post Publishing Co., 1896), pp. 39, 42,46; H.B. No. 4, Council Journal of the Fifth Session, 1868-1869 (Helena: Montana Post Publishing Co., 1896), pp. 31, 45; Montana Post, January 1, 1869; Petition of December 1, 1868, Montana Executive Office, Territorial Legislative Assemblies 5th-11th, Record Group 250, No. 15, Montana Historical Society, Helena, Montana [Hereafter cited MHS.]

[7]H.B. No. 19, House Journal of the Sixth Session, 1869-1870, (Deer Lodge: New Northwest, 1872), pp. 68,82,93,94; H.B. No. 19, Council Journal of the Sixth Session, 1869-1870, (Deer Lodge: New Northwest, 1872), pp. 68,94,98,110,116.

[8]For an excellent introduction to game legislation in the United States, see T.S. Palmer, Chronology and Index of the More Important Events in American Game Protection 1776-1911, Biological Survey Bulletin No. 41, U.S. Department of Agriculture (Washington, D.C.: Government Printing Office, 1912).

[9]An Act Relating to the Killing of Game, n.d., Laws of the Sixth Session, 1869-1870, (Helena: Helena Herald, 1870), p. 65; Granville Stuart to Peter Valilon, February 12, 1880, microfilm in possession of Merrill. G. Burlingame, Bozeman, Montana. Quail were never successfully introduced in Montana.

[10]C.B. No. 5, Council Journal of the Seventh Session, 1871-1872 (Deer Lodge: New Northwest, 1872), pp. 25,39,45,58; C.B. No. 5, House Journal of the Seventh Session, 1871-1872 (Deer Lodge: New

Northwest, 1872), pp. 53,65,77.

[11]An Act relating to the killing of game and the catching of fish, January 2, 1872, Laws of the Seventh Session, 1871-1872 (Deer Lodge: New Northwest, 1872), pp. 581-583. Note that the law pertains to the mountain buffalo, not the plains buffalo with the distinction between the two is based on certain physical characteristics and habitat.

[12]Ibid, p.582; Granville Stuart's sensitivities towards nature are discussed further in the following chapter.

[13]William Templeton Hornaday devotes several chapters to devastation of song birds in Our Vanishing Wildlife (New York: New York Zoological Society, 1912); for a more objective examination, see Robin W. Dougherty Feather Fashions and Bird Preservation: A Study in Nature Protection (Berkeley: University of California Press, 1975).

[14]See chapter 2 in Dougherty, Feather Fashions concerning the recognition of the importance of wild birds to agriculture.

[15]H.B. No. 23, House Journal of the Ninth Session, 1876 (Helena: Helena Herald, 1876), pp. 77,97; Helena Independent, January 16, 1876.

[16]H.B. No. 23, House Journal of the Ninth Session, 1876, (Helena: Herald, 1876), pp. 77,97,132,140,149,159,160,182,302; H.B. No. 23, Council Journal of the Ninth Session, 1876 (Helena: Helena Herald, 1876), pp. 118,119,135, 146,147,149.

[17]An Act to protect game, fur-bearing animals, and fish in the Territory of Montana, February 5, 1876, Laws of the Ninth Session, 1876, (Helena: Helena Herald, 1876), pp. 102-105; The term "water farmer of the plains " is from M.M. Quaife ed., Yellowstone Kelly (New Haven: Yale University Press, 1926), p. 130.

[18]An Act to protect game, fur-bearing animals, and fish in the

Territory of Montana, February 5, 1876, Laws of the Ninth Session, 1876, Section 5, pp. 103-104; see chapter James B. Trefethen's An American Crusade for Wildlife (New York: Winchester, 1975) for further information concerning spring shooting and related conservation efforts.

[19]An Act to protect game, fur-bearing animals, and fish in the Territory of Montana, February 5, 1876, Laws of the Ninth Session, 1876, Section 3, p.103; Burlingame, The Montana Frontier, p. 71.

[20]The following cursory review of the federal attempts towards buffalo protection is provided here is extracted from an article entitled "History of Buffalo Legislation" in Forest and Stream, April 6, 1882, p. 189. In 1871 and 1872 respectively, S.S. Cox of New York and R.C. McCormick of Arizona introduced bills to make it illegal to kill bison "excepting for the purpose of using the meat for food or preserving the skin." In 1872, the Senate unanimously adopted a resolution to direct the Committee on Territorial Affairs to "inquire into the expediency of enacting a law for the protection of the buffalo, elk, antelope" and other wildlife from "indiscriminate slaughter and extermination." Other bills presented even suggested a tax on buffalo hides. In 1874, Mr. Fort of Illinois presented a bill prohibiting the killing of any female buffalo except by an Indian. Surprisingly, this bill passed in both the House and the Senate, but President Grant failed to sign the bill and it disappeared in the Executive Office.

[21]Although not an official policy, the military encouraged the buffalo slaughter, as stated by Secretary of the Interior Columbus Delano in 1874: "The buffalo are disappearing rapidly, but not faster than I desire. I regard the destruction of such game ... as facilitating the policy of the Government, of destroying their [the Indians] hunting habits, coercing them on reservations, and compelling them to begin to adopt the habits of civilization," House Reports, 43d Cong., 1st sess., No. 384, p. 99; quoted in Robert M. Utley, Frontier Regulars: The United States Army and the Indian, 1866-1890 (Bloomington, Indiana: Indiana University Press, 1977), p. 413.

[22]H.B. No. 83, House Journal of the Eleventh Session, 1879 (Salt Lake City: Thomas E. Taylor, 1879), pp. 185,203,217,237; H.B. No. 83, Council Journal of the Eleventh Session, 1879, (Bozeman: Color World, n.d.), pp. 157,187; An Act to protect bison in certain counties in Montana Territory, February 21, 1879, Laws of the Eleventh Session, 1879, (Helena: Herald Book and Job Office, 1879), pp. 33-34; Helena Independent, December 23, 1879.

[23]T.S. Palmer, Chronology and Index of American Game Protection, pp. 17-18; P.W. Norris, Report Upon the Yellowstone National Park to the Secretary of the Interior For the Year 1879 (Washington, D.C.: Government Printing Office, 1880), p. 21; An Act for the better protection of game and fish, February 28, 1889, Laws of the Sixteenth Session, 1889 (Helena: Journal Publishing Co., 1889), p. 159.

[24]Out of 38 wildlife conservation bills introduced into the territorial legislature, 15 related to fisheries concerns.

[25]H.B. No. 23, House Journal of the Ninth Session, 1879 (Helena: Helena Herald, 1876), p. 160; An Act to protect game, fur-bearing animals, and fish in the Territory of Montana, February 5, 1876, Laws of the Ninth Session, 1876 (Helena: Helena Herald, 1876), pp. 104-105.

[26]Joint Memorial, Laws of the Ninth Session, 1876 (Helena: Helena Herald, 1876), pp. 205-206. The salmon, if the obstruction was removed, would "ascend Clark Fork of the Columbia into Lake Pend'Oreille in the northern part of Idaho territory; the Pend'Oreille river into the Flathead lake in Montana; thence, further ascending Clark's Fork and its tributaries, the Big Blackfoot, Bitter Root, Hell Gate, Rock Creek, and Deer Lodge rivers, to their headwaters..." It is unclear whether the obstruction was the Kettle Falls on the Columbia or the Great Falls on the Pend'Oreille.

[27]H.B. No. 67, House Journal of the Eleventh Session,1879, (Bozeman: Color World of Montana, n.d.), pp. 174,219,235,237; H.B. No. 67, Council Journal of the Eleventh Session, 1879, (Bozeman: Color

World of Montana, n.d.) p. 185; information on McCormick derived from M.A. Lesson, The History of Montana (Chicago: Warner, Beers and Company, 1885), p. 849; H.B. No. 36, House Journal of the Extraordinary Eleventh Session, 1879, (Salt Lake City: Thomas E. Taylor, 1879), p. 173; H.B. No. 36, Council Journal of the Extraordinary Eleventh Session, 1879 (Salt Lake City: Thomas E. Taylor, 1879), p. 76.

[28]Helena Independent, January 14,1879; An Act to Promote the Fishing Interests of the Territory of Montana, July 22, 1879, Laws of the Extraordinary Eleventh Session, 1879, (Springfield, Illinois: H.W. Rokker, 1881), p. 7; Council Resolution, Council Journal of the Twelfth Session, 1881 (Salt Lake City: Thomas E. Taylor, 1879), pp. 48,50.

[29]Council Joint Memorial Asking Appropriations to Remove Certain Falls in Clarke's Fork of the Columbia, Laws of the Twelfth Session, 1881 (Springfield, Illinois: H.W. Rokker, 1881), pp. 132-133; John Schuyler Crosby to Chairman, United States Fish Commission, February 17, 1883, Montana Executive Office, Territorial Legislature 12th-16th, Record Group 250, Box 16, Folder 9, MHS; In 1916, hatchery salmon had been planted in the Clearwater Lakes and by 1919, were reported in Lake Mary Ronan and Flathead Lake.

[30]John Schuyler Crosby to Chairman, United States Fish Commission, February 17, 1883, Montana Executive Office, Territorial Legislature 12th-16th, Record Group 250, Box 16, folder 9, MHS; C.B. No. 61, Council Journal of the Thirteenth Session, 1883 (Helena: Geo. E. Bos, 1883), pp. 217,238; C.B. No. 61, House Journal of the Thirteenth Session, 1883 (Helena: Geo. E. Bos, 1883), p. 340, (C.B. No. 61 apparently disappeared in the House); An Act to Protect Game, Fur-bearing animals and Fish, March 8, 1883, Laws of the Thirteenth Session, 1883, (Helena: Geo. E. Bos, 1883), p. 105; for an excellent reference concerning Montana fisheries management that includes a short discussion on early stocking, see William Alvord, "Fisheries Management in Montana", unpublished manuscript on file at Montana Department of Fish, Wildlife and Parks, Helena, Montana, 1976.

[31]Avant Courier, August 2, 1883.

[32]C.B. No. 33, Council Journal of Twelfth Session, 1881, (Salt Lake City: Thomas E. Taylor, 1881), pp. 118,125,142,149,152; C.B. No. 33, House Journal of the Twelfth Session, 1881, (Salt Lake: Thomas E. Taylor, 1881), pp. 186,207,213; An Act for the Better Protection of Fish in the Streams of Montana, February 21, 1881, Laws of the Twelfth Session, 1881 (Springfield, Illinois: H.W. Rokker, 1881), p. 50; for a brief discussion of Montana's timber industry and its politics, see K. Ross Toole's Montana An Uncommon Land (Norman: University of Oklahoma Press, 1959), pp. 159-162.

[33]An Act to Amend sec. 1 of an Act approved February 21, 1881, relating to the protection of fish, March 12, 1885, Laws of the Thirteenth Session, 1885, (Helena: Robert E. Fisk, 1885), p. 121; H.B. No. 96, House Journal of the Fourteenth Session, 1885, (Helena: Robert E. Fisk, 1885), p. 205.

[34]Avant Courier, April 14, 1887; the Grand Jury also contended that the decaying fish from the irrigation ditches became " a source of actual danger to the health of the people" in the area.

[35]H.B. No. 13, House Journal of the Sixteenth Session, 1889, (Helena: Journal Publishing Company, 1889), pp. 83,108,117,121,125,130; An Act to Provide Further Protection to Game, Fur-bearing Animals, Birds and Fish, March 1, 1893, Laws, Resolutions and Memorials of the State of Montana Passed at the Third Regular Session of the Legislative Assembly, (Helena: State Publishing Co., 1893), Section 4, p. 76, [Hereafter cited Laws of State of Montana with appropriate session and year]; An Act to allow the raising of the waters of the Jefferson River for irigating and other purposes, March 6, 1891, Laws of the Second Session of the State of Montana 1891, (Helena: Journal Publishing Co., 1891) pp. 281-282.

[36]Helena Independent, March 15, 1893; Forest and Stream, July 6, 1882.

[37]T.S. Palmer, Chronology and Index of American Game Protection, p. 17.

[38]An Act in Relation to Trout Fishing, February 2, 1865, Laws of the First Session, 1865, (Virginia City: D.W. Tilton & Co., 1866), p. 407; An Act relating to the killing of game and the catching of fish, January 2, 1872, Laws of the Seventh Session, 1871-1872, (Deer Lodge: New Northwest, 1872), p. 582; New Northwest, December 18, 1878.

[39]Message of Governor John Schuyler Crosby to the Thirteenth Territorial Legislature, January 25, 1883, Manuscript Collection 35, Vol. 2, MHS; H.B. No. 118, House Journal of the Fourteenth Session, 1885, (Helena: Robert E. Fisk, 1885), p. 287; C.B. No. 54, Council Journal of the Fifteenth Session, 1887 (Bozeman: Color World of Montana, n.d.), pp. 176,195,199,209,224; Petition, Territorial Legislative Assemblies, 12th-16th Sessions, Record Group 250, Box 16, Folder 24, MHS.

[40]H.B. No. 3, House Journal of the Sixteenth Session, 1889, (Helena: Journal Publishing Co., 1889), pp. 49,55,63,69,74,129,130,141,149; Message of Governor Preston Leslie to the Sixteenth Territorial Legislature, January 15, 1889, Council Journal of the Sixteenth Session, 1889, (Helena: Journal Publishing Co., 1889), p. 24; H.B. No. 3, Council Journal of the Sixteenth Session, 1889 (Helena: Journal Publishing Co., 1889), pp. 60,137,146,151,157.

[41]An Act providing for the better protection of game and fish and for the creation of the office of game and fish warden, February 20, 1889, Laws of the Sixteenth Session, 1889, (Helena: Journal Publishing Co., 1889), p. 157.

[42]Montana, State of, Annual Report of Game and Fish Commission, December 1, 1900, (Helena: State Publishing Company, 1901), p. 4; Helena Independent, August 9, 1892; Legislative histories for bills creating game and fish commissions and wardens include H.B. No.

46, House Journal of the Third Session of the State of Montana, 1893, (Butte City: Inter Mountain Publishing Co., 1893), pp. 85,109,129,166, H.B. No. 177, House Journal, 1893, pp. 232,241,299,303 (the bill disappeared in committee), S.B. No. 66, Senate Journal of the Third Session of the State of Montana, 1893 (Butte City: Inter Mountain Publishing Co., 1893), pp. 93,128,138 and S.B. No. 66, House Journal 1893, pp. 301,316,337,377; Message of Governor John E. Rickards to Third Legislative Assembly of State of Montana, House Journal of the Third Session of the State of Montana1893, p. 25; Message of Governor John E. Rickards to Fourth Legislative Assembly of State of Montana, House Journal of the Fourth Session of the State of Montana, 1895, (Helena: State Publishing Co., 1895), p. 10.

[43]S.B. No. 44, Senate Journal of the Fourth Session of the State of Montana, 1895, (Helena: State Publishing Co., 1895), pp. 94,114,130,140,145,286; S.B. No. 44, House Journal of the Fourth Session of the State of Montana, 1895, (Helena: State Publishing Co., 1895), pp. 266,353,459,485.

[44]Section 3100- 3114, Article 10, Chapter 5, Title 7, Political Code, The Complete Codes and Statutes of State of Montana in Force July 1, 1895 (Helena: State Publishing Co., 1895) p. 261; H.B. No. 346, House Journal of the Fourth Session of the State of Montana, 1895 (Helena: State Publishing Co., 1895), pp. 387,424,445,497,524,526; H.B. No. 346, Senate Journal of the Fourth Session of the State of Montana, 1895, (Helena: State Publishing Co., 1895), pp. 304,305,314,320,329;

[45]S.B. No. 40, Senate Journal of the Fourth Session of the State of Montana, 1895, (Helena: State Publishing Co.,1895), pp. 85,92,113,122,146,157,234, 251, 258, 259, 263, 317, 322, 335; S.B. No. 40, House Journal of the Fourth Session of the State of Montana, 1895 (Helena: State Publishing Co., 1895), pp. 485,486,518,534,543,545,547,550.

[46]Section 1110-1114, Chapter 1: Violation of the Laws for the Preservation of Game and Fish and Violation of Bounty Law, Title 16, Penal Code, The Complete Codes and Statutes of the State of Montana

in Force, July 1, 1895, p.1109.

[47] Senate Journal of the Second Session of the State of Montana, 1891, (Helena: Journal Publishing Co., 1891), p. 67; House Journal of the Third Session of the State of Montana, 1893, (Butte City: Inter Mountain Publishing Co., 1893), p. 57; Senate Journal of the Third Session of the State of Montana, 1893, (Butte City: Inter Mountain Publishing Co., 1893), p. 17.

[48] Information on legislators derived from Ellis L. Waldron, Montana Legislators 1864-1979 (Missoula, Montana: Bureau of Government Research, 1980); James A. Tober, Who Owns The Wildlife? the Political Economy of Conservation in Nineteenth-Century America (Westport, Connecticut: Greenwood Press, 1981), p. 40.

Chapter 3

CONSERVATION AWARENESS: EXPRESSING A CONCERN FOR WILDLIFE

The wildlife conservation laws of Montana in the nineteenth century provide a different perspective to the generally accepted view of the pioneer's exploitative character. Both internal and external forces contributed to the adoption of wildlife protective measures. Eastern cultural influences stimulated western efforts towards wildlife protection. Montanans, however, adapted their laws to their circumstances and environment and their actions displayed serious concern for protecting wildlife. Certain individuals, groups and sporting journals distinguished themselves in this Montana wildlife campaign for significant legislation and enforcement of wildlife laws.

Prior to the formation of the Montana Territory, several individuals had expressed concern about wildlife populations within the region. Osborne Russell's Journal of a Trapper is an excellent contemporary account of the life of the fur trapper in the later years of the beaver trade. The "mountain men" ascended the Missouri River in search of beaver and roamed the area now known as Montana for over 30 years. Russell's journal clearly illustrates how the "mountain man" depended on wildlife for food, clothing and

shelter.[1]

One would not expect sentiment favoring conservation when the trappers could view "immense" herds of buffalo, deer, antelope and elk and spend their winter months "raising havoc with the buffalo." Even Russell seemed surprised when his partner made:

> an observation which I shall never forget Said he I have been watching these cows some time and I can see but one that is poor enough to Kill" for said he it is a shame to kill one of those large fat Cows merely for two mens suppers"

While such a sporting attitude was rare, Russell himself expressed some concern for the diminishing wildlife resource, particularly the buffalo. Russell felt it was unfortunate that the buffalo, "so useful in supplying the wants of man," would become extinct because of civilization's demand for robes and because of increasing predator populations.[2]

As the fur trade opened up the Upper Missouri to travel, naturalists interested in observing and studying nature ascended the Missouri. In 1832, George Catlin traveled up the Missouri River to study and paint the country and its inhabitants and reached Fort Union near the mouth of the Yellowstone River. While painting the Plains Indians, Catlin noted changes taking place in their culture and desired to preserve images of the Indians in their natural state on canvas before White contact destroyed the people and their culture. Catlin, as had Russell, recognized the increased pressure on the buffalo and anticipated "the period which is not far distant, when the

last of these nobles animals, at the hands of white and red man, will fall victim..." He suggested "A nation's Park" be created "containing man and beast, in all the wild and freshness of their nature's beauty."[3]

In 1883, Prince Maximilian of Wied was one of the first naturalists to travel up the Missouri. Accompanied by the young Swiss artist Charles Bodmer, he traveled to the trading post at Fort McKenzie located near the present town of Fort Benton. Bodmer's contribution to the documentation of the Plains Indian culture and the Upper Missouri landscape is unsurpassed. Maximilian's journals provide excellent ethnographic information and some observations concerning wildlife. The traders told him how the "Wild beasts and other animals, whose skins are valuable in the fur trade, have already diminished greatly in number along this river, and it is said that, in another ten years, the fur trade will be very inconsiderable."[4]

Ten years later, in 1843, an American naturalist, John James Audubon, traveled to Fort Union near the present-day boundary between North Dakota and Montana. A renowned illustrator of birds, Aububon filled his journal with references to wildlife found in the area and noted the numerous specimens killed for him. He wrote of buffalo herds beyond his comprehension, saying it would be "impossible to describe or even conceive the vast multitudes of these animals." As had Russell and Catlin before him, he realized the threat to these animals, calling the buffalo slaughter "a terrible destruction of life," and noted "even now perceptible difference in

the size of the herds and before many years the Buffalo, like the Great Auk, will have disappeared; surely this should not be permitted."[5]

The federal government, however, expressed no interest in curtailing the rapid exploitation of wildlife. Guided by the doctrine of Manifest Destiny, the government sponsored surveys in the western territories with the primary purpose of opening transportation routes. Nevertheless, members of these government surveys beginning to explore the western territories often echoed concerns over the depleting wildlife resource. The 1853 Northern Pacific survey team led by Issac Stevens included naturalists, botanists and other professionals. These men, in their official reports, commented on the severity of the depredations and suggested the need for relieving the pressure on buffalo and other large game rather than just bemoaning the slaughter. In 1858, one government survey that explored the Yellowstone River officially documented the buffalo slaughter in that area. Captain William F. Raynolds, in his report, stated "that the wholesale destruction of the buffalo is a matter that should receive the attention of the proper authorities." He suggested prohibiting the trade of buffalo robes and providing a bounty on wolves, though he feared "it is too late for even this remedy."[6]

Government-sponsored expeditions continued to explore and to observe the Montana landscape even after the establishment of the Montana Territory. In 1875, George Bird Grinnell, the zoologist on the Ludlow reconnaissance to Yellowstone National Park, wrote of the

"terrible" slaughter of all game in the Territory for hides only. He felt "much might be done to prevent the reckless destruction... by the officers stationed on the frontier." C.E. McChesney, an Army Corps of Engineer naturalist, reported in 1879 seeing "the most reckless slaughter of buffalo by white men when they had no use for... a single one of them." He recommended that "stringently" applying the law in a few instances would do much to "relieve" the problem.[7]

Scientific investigations within Montana Territory were not limited to government expeditions. A surprising number of professional naturalists from universities and private institutions came to Montana to study and gather information on the flora and fauna. Montana even had some resident amateurs, including several women, who observed nature and collected specimens. It is difficult to gauge their influence, but such individuals must have increased Montanans' awareness of nature by sharing their observations, findings and enthusiasm.[8]

These visiting individuals had an appreciation for nature developed from the eastern perspective, not from that of the pioneer. They did not, as the pioneer, have to confront the wilderness, struggle for survival or cope with the environment every day. The pioneer envisioned himself in a land of inexhaustible resources and used those resources as necessary as he opened up the land for the coming of civilization.[9]

It would be a mistake, however, to characterize all pioneers as being callous or insensitive to their environment. Two of the earliest pioneers in Montana appreciated nature and influenced the passage

of the first wildlife conservation measures in the Territory. James Stuart and his brother, Granville, wintered in 1857-58 in southwestern Montana, at that time still part of Washington Territory. Since they had grown up on the edge of the frontier, the hunting of wild game had always been an important feature in their lives. That winter in the Beaverhead Valley, they occupied their time "in visiting one another's camps and in hunting...It was meat or do without meat... but as game was plenty and James was an excellent hunter, the camp was plentifully supplied...." During that same winter, however, game became scarce and difficult to obtain.[10]

Men depended on wild game for survival in those early years. The fluctuations from feast to famine during a long winter must have made the brothers appreciate the wildlife within the Territory. The joint journals of James and Granville Stuart are filled with references to their hunting and fishing excursions. They wrote not only of the game killed, but also expressed their mutual regard for the wild. James particularly displayed a "keen delight and joy in the picturesque of nature" and an "enthusiastic love for nature in her primitive and untutored aspects." Adventurous and aggressive, James was the epitome of the frontiersman, but an anomaly as well for he was well read and known for his "fine intellectual capacities."[11]

James Stuart's powers of observation are especially visible in his journals of the 1863 Yellowstone Expedition. He led a group of thirteen men to explore and to discover gold in the Yellowstone drainage. The journal is an excellent documentary on the wildlife

found in the regions through which he and his companions travelled. Besides recording the exploits of the expedition, every page noted the wildlife seen or hunted. The expedition subsisted on wild game and every day provided "for itself." James, as elected captain of the expedition, did not allow wanton slaughter. He did not permit the men to shoot without his permission and admitted he "had difficulty in keeping the party from bombaring them [elk]." Once he did allow the "boys" to run after some buffalo though he thought it a "shame to kill them."[12]

Such a sporting attitude seems out of place on the frontier. The Stuarts, however, were not made from the same mold as many early pioneers. Avid readers and regarded as intellectuals, they were sensitive to changes occurring in the Territory. Living and working together, the brothers depended upon each other tremendously, each influenced by the opinions and experiences of the other. James, the older and more aggressive brother, usually initiated an endeavor, with Granville ending up with the responsibility. They shared in the writing of their joint diary and this communal effort may have extended to Granville's other writings as well.[13]

When James Stuart presented his protective trout bill to the first Territorial Legislature in 1864, Granville Stuart had concurrently written of his outrage against fisheries waste in his descriptive history of Montana, Montana As It Is. Granville cried out against the "barbarians" who had used "seines and dragged out these beautiful citizens of the brook by the wagon load." While James manifested their mutual concern by designating the proper way to

fish and prohibiting the use of seines, Granville lent his support by writing about game depredations:

> The Deer Lodge Valley is famous for two things, One is that mountain trout are more plenty in it then any other place of the same extent in the world. I do not know, however, but I had better say were for vast quantities of them have been caught in the last year, a large portion of which were allowed to spoil and were thrown away... If the legislature does not enact some laws in regard to game and fish, there will not be in a few years so much as a minnow or a deer left alive in all the Territory.[14]

James Stuart's outrage at the pointless waste led him to introduce a bill initiating the first wildlife conservation measure to be placed on the territorial statutes. As an avid hunter and fisherman, he recognized the necessity of protecting wildlife in the Territory. His actions lent credence to the concept that sportsmen were the creators and defenders of the conservation movement. His brother, Granville, persisted in this family tradition and became the ardent supporter of wildlife conservation in the Territory of Montana.

Granville Stuart persistently strove to improve wildlife protective measures and his bills formed the platform for the evolution of wildlife laws in the territory. Where James has been described as a man of action, Granville was more of a dreamer and philosopher, a "lover of all creation." Granville loved to hunt and fish and he harbored more humane inclinations towards wildlife than did the typical frontiersman. Once, after killing a white-tailed deer, he found she had two fawns and he "would have given anything to have

restored the poor thing to life and to have allowed her to go free with her children." Numerous examples of Granville's sensitivity towards wildlife are recorded in his letters and journals.[15]

In Montana As It Is, Granville stated his position regarding wildlife depredations in the Territory. He estimated that "at the present time at which this noble game (buffalo) is being murdered they will be extinct in 50 years" and laid the blame on both the White man and the Indians. The White man would shoot hundreds of them for sport or tongues and leave them "hide and all to rot on the plains" and the Indians, incited by the fur companies, killed "annually more than they want to get robes for trade to the whites."[16]

Granville deplored the waste of wildlife in the early 1860s:

> It made me mad to see the shameful manner in which people of every class hunted down and killed game of all kinds during the past winter, when it was absolutely too poor for anybody to eat. Every cabin had 3 or 4 deer and elk &, hanging on it, which towards spring were thrown away.

Granville introduced wildlife conservation bills at the first opportunity. Serving in the Territorial Legislature intermittently from 1871 to 1883, Granville sponsored and supported numerous wildlife protective measures. In 1876, he introduced a bill that became the basic law for wildlife protection, encompassing game, fur-bearing animals and fish. The Helena Independent praised the bill, claiming that "Mr. Stuart's long and extensive experience in the game districts qualifies him to draft a measure which will insure

essential quality of protecting our rapidly diminishing resources."[17]

After 1880, Granville became partner and manager of the DHS cattle ranch in the Judith Basin. Difficulties with Indians off the reservation raiding his cattle added another dimension to his position concerning game depredations. He felt that, so long as the government allowed Indians to roam off the reservations and kill buffalo for hides to trade for whiskey or cartridges, the game slaughter would continue. And "with rapid extinction of all the large game...the inevitable result will be that they will prey upon our herds." He wrote the editor of an eastern sporting journal that, "One must live long upon the frontier to fully comprehend the inferal folly of hunting as well as consumate stupidity that characterizes our Indian policy."[18]

Stuart received support in his vendetta against Indians leaving their reservations and for protection of the wildlife resource from the newly appointed governor, John Schuyler Crosby. Crosby was from an elite New York family, a personal friend of President Arthur and a veteran of the Civil and Indian Wars who had just finished serving as the U.S. consulate in Florence. In his message to the Territorial Legislature in 1883, he stated that he wanted to "restrain the Indians absolutely from leaving their reservations for hunting believing in the idiom that one day of hunting makes the Indians all savage." He did not feel that Indians should be exempt from the game laws any more than the White man and promised to bring "all offenders to justice."[19]

In the Territory less than a month, Crosby was already

investigating both Indian and White infractions of the wildlife laws. When informed of the slaughter of game near Henry's Lake, he requested that the district attorney in Bozeman "take immediate steps to enquire into the facts, stop the trespass, arrest the trespassers and report as soon as possible..." He probably irritated some local officials by telling them what to do and who to contact and by reprimanding them when dissatisfied with their actions. His expressed concern for wildlife spurred some citizens to inform him about game law violations in the Territory that otherwise would have been ignored.[20]

Governor Crosby had proclaimed himself a defender of wildlife prior to his arrival to Montana Territory. In December, 1882, at the request of Congressman George Vest of Missouri, chairman of the Congressional Committee on Territories, Crosby wrote a treatise on game protection in Yellowstone National Park. He felt that the Park should be enlarged and that game within the Park should be accorded absolute protection. He diplomatically applauded the citizens of Montana Territory for their efforts towards game conservation, rationalizing the killing of game for food and the killing of buffalo for food and hides. He urged, however, that the people of Montana should enforce "their own wise and excellent game laws" for the "spirit is willing but the flesh is weak."[21]

In his governor's message to the Thirteenth Territorial Legislature in 1883, Crosby further endorsed game protection in the Park by introducing a new economic perspective in support of wildlife protective measures. He stressed that the overflow from a

well-stocked Park "would furnish food for our own people and for sportsmen who would be attracted to this Territory and spend annually large sums of money to the advantage of our citizens." Crosby also instigated the cooperation of the governors of Wyoming, Idaho and Dakota Territories for a "united effort to preserve the large game of the Northwest from wanton slaughter by skin hunting and so called sportsmen." The governors met in Helena where they agreed to send a special message to their respective legislatures asking for stringent laws to "protect the large game and punish all offenders."[22]

A legislative resolution later thanked Crosby and others for their efforts towards wildlife preservation in the Park. While Crosby held the governorship, he continued to champion wildlife conservation in the Territory and in the Park. A transplanted easterner, Crosby stimulated regional awareness regarding game depredations in the Territory and initiated action against violators of game laws. Although he "was entirely out of harmony with the Territory" on many legislative measures, his correspondence indicates support from his constituents for his efforts towards wildlife conservation.[23]

Crosby was not, however, the first territorial governor to advocate the importance of wildlife conservation. His predecessor, Benjamin Franklin Potts, "at the request of many of our best citizens," recommended in his message to the Legislature in 1881 that game laws should prohibit the killing of elk, antelope and deer except for food. He noted that these animals "are openly killed for the hides

only and not used for food" and, if the slaughter continues, "the game of the Territory will soon be exhausted." He diplomatically avoided including the buffalo in his recommendations, however, since their harvest still economically benefited the Territory and the demise of buffalo would aid in subjugating the Indians.[24]

"Many of the best citizens" mentioned by Potts must have included members of the Helena Rifle Club. This club, organized in 1877, was the first sporting club in the Territory. Rifle clubs (or rod and gun clubs) included men fond of trapshooting and hunting. Sportsmens' clubs had originated in the east where they played a major role in waterfowl protection efforts in the days of destructive market hunters. Groups of sportsmen purchased land to protect the waterfowl routes and to prevent trespass by market hunters. In 1844, New York sportsmen organized the New York Sportsmen's Club solely for "the protection and preservation of game." Prior to the Civil War, most of the major eastern cities had sporting groups and clubs that fought for wildlife protection.[25]

Sportsmens' clubs, generally attributed to the "urban elite" and lead by a doctrine of "enlightened hedonism," consisted of influential, prominent citizens of eastern communities. The nineteenth century sportsmen "emerged" from the nouveau riche, as a product of the Industrial Revolution. These affluent individuals had the leisure to participate in the sporting pleasures of trapshooting or hunting. Their mentor was Henry William Herbert, known as Frank Forester, who in the 1830s espoused the ethical code of the sportsman.[26]

As Montana Territory developed and some mining camps

became urban communities, sporting clubs began to appear. Similar to the eastern clubs, the members represented a certain class of citizens with a particular socioeconomic status and prominence in their communities. In Montana, many of the members had been in the Territory since its inception. Granville Stuart was one of the original members of the Helena Rifle Club and served as secretary and president. Another Helena member, Colonel W.B. Hundley, was extensively involved in freighting and stockraising in the Territory. Both men had served in the Legislature and were well respected by their peers.[27]

In other urban centers of the Territory, members of the sportsmens' clubs were generally influential and well-established individuals. In Bozeman, Walter Cooper organized the Bozeman Gun Club in 1883. Cooper had started one of the first sporting good stores in the Territory, handling and manufacturing guns, ammunition and fishing tackle. He also had been extensively involved with the fur trade in the 1870s. Another prominent Bozeman merchant, S.W. Langhorne. served as first vice president of the club. Langhorne had lived in Bozeman since 1870 and had held numerous city, county and territorial positions. Other members in the Bozeman club included T.B. Sackett and Mr. Worth, who jointly owned a saloon and gambling hall in Bozeman, and J.G. Steffens, a jeweler.[28]

E.S. Paxson, the western artist and an original member of the Butte Club, was instrumental in organizing the Deer Lodge Rod and Gun Club. Another member of the Butte Club, Frederick Gilbert, joined for both social and business reasons since his business sold

firearms and fishing tackle. Parmly Billings, son of Frederick Billings, and E.B. Camp, one of the earliest merchants and founders of Billings, both belonged to the Billings Gun Club. In Missoula, merchants such as R.A. Eddy participated in sporting clubs. These individuals could be considered an elite group from their influence in their communities and in the Territory. Members included successful merchants, businessmen and professionals. Noticeably absent from available membership lists were farmers and miners.[29]

While the social aspect of the clubs held some importance, many clubs stated their intent to protect wildlife in the Territory. The Helena Rod and Gun Club declared "protecting and enforcing game laws" as their primary purpose. In 1880, Granville Stuart, then president of the club, wrote the editor of a national sporting journal that while the game and fish laws in the Territory are "good enough," it is hard to enforce them:

> ... except by the formation of Clubs. and this is what we are doing in the several counties + the result is that the law is respected to a reasonable extent in those that are tolerably well populated...

He clarified his statement by explaining that some of the counties in the Territory are "large enough for a fair sized state and are only peopled in spots + one, Dawson, not at all."[30]

The Deer Lodge Rod and Gun Club, organized in 1880, declared its intention:

> ... to protect game and fish under the laws as they do exist, to act in conjunction with like organizations throughout the

> territory in presenting to the legislature desirable amendments to such laws; to encourage healthful and honest shooting and fishing and repress destructiveness...

The Butte Club, organized in 1883, had thirty-five members who regarded "the game law like true sportsman." The Club appointed a committee "to do all in their power to bring justice to certain parties who have for a long time been disregarding it." In 1884, the town of Billings formed a shooting club "for social and sporting purposes, but particularly with a view to enforcing the game laws and protecting the game."[31]

Sportsmen, strengthened by these sporting clubs, began seriously as a group to lobby the Territorial Legislature in the early 1880s, realizing that:

> ...the territory is fast becoming settled up, there comes the necessity of giving the game a chance for life and a fair one at that. If more clubs shall be organized throughout the Territory... and we can protect our game, then indeed Montana will be the great paradise of sportsmen for years to come.

In 1883, the Helena Independent commented that "sportsmen want the game laws amended in their interest and people who are not sportsman, but who like to hunt and fish occasionally, want the laws amended more in their interests."[32]

The first known cooperative effort by sportsmens' clubs against game destruction occurred in 1887. The Bozeman Avant Courier raised a cry over the wanton slaughter of elk, after "2 lazy hunters" peddled "5,000 lbs of elk meat on our streets." In January, after the game law had expired, hunters offered "the hindquarters of over 100

elk" for sale and the newspaper called to sportsmen to "take prompt action." Two members of the Bozeman Rod and Gun Club traveled to Helena "to secure the co-operation" of the Helena Club to support protective legislation against such depredations. The Bozeman contingent wanted to prohibit the "sale of game meat or fur at any and all seasons, to the end that what little game remains may be preserved for sport and for no mercenary purpose."[33]

Members from gun clubs all over the Territory participated in the Helena meeting. They determined "impracticable" the original proposal to prevent sale of wild game at any time of the year. Instead, the sportsmen decided to ask the Legislature to close the hunting season on November 1 instead of January 1 and make the selling of game out of season illegal. The group also appointed a committee of individuals from various sporting clubs in the Territory to draft and circulate a petition concerning the proposed legislation. The petition, addressed to both houses of the Legislature, read as follows:

> We, the undersigned, citizens and residents of the Territory of Montana, being familiar and acquainted with the proposed Bill creating the office of GAME AND FISH DETECTIVE, and for the better protection of Game and Fish in Montana Territory, respectfully represent that the conditions of affairs in said Territory urgently calls for such an enactment, and request the proposed measure may become a law.

One hundred and sixty-eight citizens signed the petition, but this bill, supported by sportsmen, failed.[34]

The sportsmens' groups received more attention after Montana became a state in 1889 and the Legislature established standing Game and Fish Committees. In 1893, members of the Helena, Great Falls, Deer Lodge and Butte sportsmen clubs again unified their efforts to improve wildlife protective measures. Meeting in Helena, they agreed that there was "room for considerable improvement" in the laws and had lawyers frame a bill containing their proposed amendments. Fortunately, the game and fish committee took "a lively interest in the question" and agreed to sponsor the bill. This lobbying effort resulted in an extensive revision of existing wildlife laws.[35]

Both internal and external factors served to reinforce the wildlife protection efforts of rod and gun clubs in Montana Territory. Even before the formation of such clubs, most regional newspapers usually aided the cause with positive remarks about proposed or existing wildlife conservation legislation. As early as 1866, the Montana Post called a bill to repeal the 1864 Trout Act a "scaly piece of business" that would bring the "extermination of the trout within five years." In 1876, the Daily Independent declared it would be "folly" to destroy the game and gave support to Granville Stuart's wildlife protection bill. In 1879, the same paper hoped:

> ...that the people of Montana will observe the game and fish laws. Montanans as a rule are a law-abiding people, but there are some who do not observe the law in relation to the destruction of game. We call the attention of the people to the fact that such laws are in existence and we also call upon the proper officers to see that they

are not violated.[36]

The territorial newspapers also served an important function in notifying citizens of the opening and closing of game seasons, telling hunters to "Get your short guns out and go gunning tomorrow. Birds are plentiful and no law against taking them" and that " the game law expired yesterday and the nimrods of Montana are hastening to the hunting grounds...." The newspapers issued warnings to potential violators of the law, noting "as the game law was out yesterday, those who take pleasure in slaughtering the feathered tribe can now turn themselves loose- but don't kill them to sell or you will suffer."[37]

Although aware of wildlife-related problems, the newspapers were also the best promoters of the Territory, praising its abundance of resources with special interest in the economic development of their town and region. The newspapers commented on the buffalo, but seldom spoke of the wasteful and destructive buffalo hide trade. As an advocate for progress and prosperity, some newspapers viewed exploitation as paving the way for civilization. As the Butte Miner stated:

> It may be some incidental advantages to hotels, guides and common carriers that Montana should remain a national hunting ground but for the higher material welfare of Montana, civilization is preferable to game and farms to deer parks...[38]

While most territorial newspapers supported to some extent the protection of wildlife, the strongest advocates were the national

sporting journals. Several journals established in the early 1870s gave "new impetus" to game protection which "was almost immediately reflected in an increased volume of legislation." In 1873, the editor of Forest and Stream stated that the purpose of the journal would be to "promote a healthful interest in outdoor recreation," but "wage a constant war" against wildlife destruction and waste.[39]

Journals such as Forest and Stream provided a means of communication for the sporting community in the isolated Territory of Montana. As early as 1874, people in Montana received copies of the journal, and references to Montana appeared on its pages. Forest and Stream lamented that "the large game of our Territories is diminishing each year with greater rapidity," but recognized the problems of game protection in the territories and encouraged the formation of clubs and the enactment of wildlife protective laws.[40]

When George Bird Grinnell became editor of Forest and Stream in 1880, editorials on the western territories and Montana specifically appeared frequently. Grinnell, from an old and prestigious New York family, had a personal interest in Montana and its wildlife. After he attended Yale, Grinnell had headed west as a naturalist. A member of the Ludlow Expedition to Yellowstone National Park in 1875, he voiced concern in his report about the slaughter of wildlife in Montana Territory:

> It may not be out of place here, to call your attention to the terrible destruction of large game, for the hides alone... Buffalo, elk, mule-deer, and antelope are being

> slaughtered by thousands each year, without regard to age or sex, and at all seasons. It is certain that, unless in some way the destruction of these animals can be checked, the large game still so abundant in some localities will ere long be exterminated.

In this same report, he suggested that the military posts should drive off the skin hunters. Grinnell viewed the territorial wildlife laws realistically, emphasizing "they are imperfect, and cannot, in the present condition of the country, be enforced."[41]

Grinnell, in his editorials, attempted to educate sportsmen on sporting ethics and also stressed the importance of game protective measures. Commentaries on legislative actions (or lack thereof) pertaining to game protection on federal, state and territorial levels filled the pages of the journal. Grinnell concentrated his efforts towards gaining effective wildlife legislation and advocated enforcement of the laws. Grinnell campaigned extensively for protection of Yellowstone National Park where "the large game of the West may be preserved ... in this their last refuge." These editorials undoubtedly influenced Montana clubs and individual citizens concerned about wildlife.[42]

By 1887, Forest and Stream regarded Montana as the "best and most accessible hunting ground for big game in all the Western country." The journal recognized the Bozeman Rod and Gun Club and "other enlightened citizens" for their lobbying efforts to the Legislature "to arouse public sentiment on the question of game protection." Grinnell warned, however, that "to accomplish anything the laws must be enforced" to earn the "gratitude of all who are

interested in the large game of the West" and be "a great service for Montana."[43]

Editorials in sporting journals such as Forest and Stream encouraged wildlife protection in Montana and gave support, guidance and incentive to the sportsmens' groups for a united effort towards wildlife protection, enhancement and law enforcement. A month after Montana became the forty-first state in the Union, William T. Hornaday observed:

> ... Montana is now appointing game wardens to enforce her game laws, which of themselves are excellent; that a general sentiment in favor of real game protection is crystallizing rapidly throughout at least a portion of the west...

Sportsmen, legislators and private citizens all realized the difficulties of legislating and protecting wildlife due to the vastness of the region but they persevered, laying the foundation for twentieth-century wildlife conservation.[44]

ENDNOTES

[1]Osborne Russell, Journal of a Trapper ed. Aubrey L. Haines (Lincoln: University of Nebraska Press, 1965); every page contains passages about wildlife seen or killed.

[2]Ibid., pp. 54,69,138.

[3]George Catlin, Letters and Notes on the Manners, Customs and Conditions of the North American Indians 2 vols, (London: George Catlin, 1841), 1: 247,262.

[4]Reuben Gold Thwaites, ed., "Maximilian, Prince of Wied's Travels in the Interior of North America, 1832-1834," Early Western Travels 3 vols. (Cleveland, Ohio: The Arthur H. Clark Company, 1906), 1:379.

[5]Maria R. Audubon, ed., Audubon and His Journals 2 vols. (New York: Charles Scribners' Sons, 1897), 2: 131,146.

[6]William H. Goetzmann focuses on western exploration and the role of the scientist in Exploration and Empire: The Explorer and the Scientist in the Winning of the American West (New York: W.W. Norton & Company, 1966); William Franklin Raynolds, The Report of Brevet Brigadier General W.F. Raymolds on the Exploration of the Yellowstone River and the Country Drained by that River. (Washington, D.C.: Government Printing Office, 1868), p. 11.

[7]George Bird Grinnell, "Letter of Transmittal" in William Ludlow's Report of a Reconnaissance from Carroll, Montana, on Upper Missouri to Yellowstone National Park and Return, Made in the Summer of 1875. (Washington, D.C.: Government Printing Office, 1876), p. 61; C.E. McChensey, Report on the Mammals and Birds of the General Region of the Big Horn River and Mountains of Montana. Report of Chief of Engineers, U.S. Army, Appendix 553 (Washington, D.C.: U.S.

Army, 1879), p. 2375.

[8]In 1958, Dr. Caroline McGill compiled an abstract of work done by naturalists in Montana, extracted from Joseph A. Ewan's Rocky Mountain Naturalists (Denver: University of Denver Press, 1950).

[9]For a discussion on the pioneer's attitude towards his environment, see Roderick Nash's Wilderness and the American Mind (New Haven: Yale University Press, 1967), chapters 1-2.

[10]Granville Stuart, "A Memoir of the Life of James Stuart," Contributions to the Historical Society of Montana 1 (Helena, Montana: Independent Publishing Company, 1902): 35.

[11]Almost every page of the joint diary refers to game observed, hunted or killed: see Stuart, Forty Years on the Frontier; New Northwest, November 8, 1873 and Daily Rocky Mountain Gazette, October 8, 1873, quoted in Granville Stuart's "A Memoir of the Life of James Stuart," Contributions to the Historical Society of Montana 1: 61, 55.

[12]James Stuart, "The Yellowstone Expedition of 1863," Contributions to the Historical Society of Montana1: 132-205,141, 164.

[13]David Remley particularly stressed the mutual dependency of the brothers in his article "Granville Stuart, Cowman" Montana the Magazine of Western History 31 (July, 1981): 28-41.

[14]Stuart, Montana As It Is, p. 60.

[15]Stuart, Forty Years on the Frontier, 1: 250.

[16]Stuart, Montana As It Is, p. 50.

[17]Ibid, p. 55; Helena Independent, January 16, 1876.

[18]Granville Stuart to N. Howe, Chicago, Illinois, April17, 1881, microfilm in possession of Merrill G. Burlingame, Bozeman, Montana.

[19]Biographical information on Crosby from Clark Spence, Territorial Politics and Government in Montana 1864-1889 (Urbana, Illinois: University of Illinois Press, 1975), pp. 150-157; Message of Governor John Schuyler Crosby to the Thirteenth Territorial Legislature, January 25, 1883, Official Executive Office Manuscript Collection 35, Vol. 2, p. 23, MHS.

[20]John Schuyler Crosby to Thomas R. Edwards, January 20, 1883, Official Executive Office Manuscript Collection 35, Vol. 2, p.16, MHS; see both volumnes 1 and 2 of this collection for Crosby's outgoing correspondence to territorial officials and cititzens concerning wildlife conservation issues.

[21]John Schuyler Crosby to George G. Vest, December 29, 1883, Official Executive Office Manuscript Collection 35, Vol. 2, pp. 2-5, MHS.

[22]Helena Independent, January 26, 1883; John Schuyler Crosby to N.G. Ordway, February 7, 1888, Manuscript File 430, Item 2, Special Collections, Montana State University Library, Bozeman, Montana.

[23]Resolution Approved February 16, 1883 Laws of the Territory of Montana 1883, Stuart, Forty Years on the Frontier, p. 168. Refer to Manuscript Collection 35, Vols. 2 and 3, MHS for Crosby's outgoing correspondence with his constituents.

[24]Message of Governor Benjamin Franklin Potts to the Twelveth Territorial Legislature, January 15, 1881, Council Journal of the Twelveth Session, 1881, p. 19.

[25]The importance of sportsmen and sportsmen's groups to wildlife protection and conservation is the theme of John F. Reiger's

American Sportsmen and the Origins of Conservation (New York: Winchester Press, 1975); however, James B. Trefethen provides a more objective discussion in his American Crusade for Wildlife (New York: Winchester Press, 1975), see especially chapter 6 for origins of sportsmen clubs.

[26]Theodore Whaley Cart, "The Struggle for Wildlife Protection in the United States, 1870-1900: Attitudes and Events Leading to the Lacey Act" (Ph.D dissertation, University of North Carolina, 1971), p. 78; Trefethen, An American Crusade for Wildlife, pp. 69-76.

[27]Michael A. Lesson, ed., History of Montana, 1739-1885 (Chicago: Warner, Beer & Co., 1885), p. 748.

[28]Information pertaining to the memberships is limited; Walter Cooper, manuscript file 1250b, Special Collections, Renne Library, Montana State University, Bozeman, Montana; Lesson, History of Montana, p. 1138; Bozeman Polk Directory 1892-1893 (Bozeman: New Issue Publishing Company, 1893), pp. 147 and 175.

[29]E.S. Paxon, Jr., E.S. Paxson, Frontier Artist (Boulder, Colorado: Pruett Publishing Co., 1984), p. 25; Lesson, History of Montana, pp. 1335-6,976,1304.

[30]Lesson, p. 748; Granville Stuart to N. Howe, April 17, 1881, microfilm in possession of Merrill G. Burlingame, Bozeman, Montana.

[31]New Northwest, February 13, 1880; Forest and Stream, April 26, 1883 and April 23, 1885.

[32]Forest and Stream, April 23, 1885; Helena Independent, August 23, 1883.

[33]Avant Courier, November 25, 1886 and December 30, 1886; Helena Independent, January 21, 1887; Under the 1883 game law, it was illegal to hunt elk and other large game animals between January 1 and August 15.

[34]Helena Independent, January 27, 1887; Petition to Council and House Representatives of Territory of Montana, Territorial Legislative Assemblies 12-16, Record Group 250, MHS; J.E. Rickards of Silver Bow County introduced the bill into the Council, but it was indefinitely postponed, C.B. No. 54, Council Journal of the Fifteenth Session, 1887, pp. 181,195,209,224.

[35]Helena Independent, January 26, 1893; See An Act to Provide Further Protection to Game, Fur-Bearing Animals, Birds and Fish, March 1, 1893, Laws of the Third Session of the State of Montana 1893, pp. 72-73.

[36]Montana Post, March 30, 1866; Helena Independent, January 16, 1876 and March 15, 1879.

[37]Helena Independent, August 15, 1889, August 14, 1881, and August 16, 1882.

[38]Butte Miner, January 28, 1883.

[39]U.S Dept of Agriculture, Chronology and Index of American Game Protection, p. 11; Forest and Stream, August 14 and 21, 1873.

[40]For some early references to Montana, see Forest and Stream, September 24, 1874, May 14, 1874, October 14, 1874 and September 10, 1874; Forest and Stream, November 15, 1883.

[41]For selected writings by Grinnell, see John F. Reiger ed., The Passing of the Great West: Selected Papers of George Bird Grinnell (New York: 1972); also see Trefethen, An American Crusade For Wildlife and Reiger, Sportsmen and the Origins of Conservation for Grinnell's contribution to wildlife conservation; George Bird Grinnell, "Letter of Transmittal" in William Ludlow, Reconnaissance, p. 61.

[42]Grinnell's editorials in Forest and Stream are important to

understanding the evolution of game laws in the West, and his influence on Montana wildlife legislation is significant. George Bird Grinnell, as quoted in Reiger, American Sportsmen and the Origins of Conservation, p. 103.

[43]Forest and Stream, May 2, 1887; The journal also noted negatives elements in Montana as well. In 1882, the formation of the Yellowstone Valley Hunting Club in Glendive appalled Forest and Stream. Created to provide a guiding service for the benefit of "tourists and the world at large," the active members of the club who were "famous scouts, hunters and marksmen" would direct hunters and enable them to "approach and capture game without loss or needless labor and expense." The club planned to establish a communciation network to locate preferred game. Such systematized slaughter went against the sportsmen's ethic prescribed by the journal and the editor suggested that the club's name be changed to the Yellowstone Valley Game Exterminating Club. The president of the club further incited Grinnell by insinuating that he was a tenderfoot and that "eastern hunters have no idea of the extent of this territory and we laugh when you talk of exterminating the game." Grinnell only hoped "that there are in Montana law officiers and private citizens with pluck and backbone enough to oppose this destruction of game."

[44]William Templeton Hornaday, "The Extermination of American Animals," The Chautauguan, December, 1889, p. 304.

Chapter 4

CONCLUSION: A TRADITION ESTABLISHED

Aldo Leopold, who formulated the concepts of wildlife management, minimized wildlife preservation efforts prior to 1905 as attempts to divide "up a dwindling treasure" in order to "string out remnants of the virgin supply" by restrictive hunting measures. However, the existence of wildlife conservation laws in Montana and their evolution during the territorial and early statehood periods reflected a serious concern for protecting and preserving the resource for the future and not just to "perpetuate."[1]

Admittedly, the laws were ignored and ineffective in most circumstances because they evolved in an atmosphere where man "directed his energies towards conquering, not conserving nature." The very character of the western environment, its abundance, vastness and boundless opportunities led to land use excesses and often mindless despoliation:

> The Westerner, sui generis, the nineteenth-century American, surrounded and entrapped by an amazing wealth of natural resources, desperately descended to exploit the environment with all haste.[2]

The rapid changes to the landscape coincided with the advance

of civilization. Civilization on the frontier equated economic prosperity with industrialization and utilization of resources, but civilization also existed in the form of law. Wildlife legislation in Montana, influenced by the cultural baggage of legislators and their familiarity with eastern game laws, adapted and imitated established eastern laws. These laws constituted a civilizing element, and early wildlife conservation legislation possibly "reflected at least a desire on the part of the inhabitants to portray themselves as God-fearing, civilized Americans."[3]

Wildlife conservation laws also expressed a serious concern for wildlife in Montana. Beginning with the first Territorial Legislature in 1864, private citizens, legislators, governors and sportsmens' clubs supported wildlife conservation legislation. These individuals, often prominent citizens in the region, appreciated the amenities, aesthetics and often economic values inherent in wildlife. Contradicting the traditional pioneer attitude of unrestrained access to game, they showed great determination and perseverance in their efforts to preserve and protect wildlife.

Sportsmens' clubs, or rod and gun clubs, appeared in Montana by the 1880s. While primarily organized for social and sporting purposes, these clubs also advocated conservation of wildlife. As an influential class in the community, the clubs served effectively as agents in obtaining desired wildlife legislation. While it is difficult to gauge their influence on the general public, these clubs functioned as a social conscience, recognizing value in wildlife beyond that of commercial exploitation.

George Bird Grinnell consistently emphasized the importance of organizing sportsmen' clubs to obtain effective legislation. Grinnell, knowledgeable about the West, and especially Montana, became the editor of Forest and Stream in 1880 and actively represented interests of the sportsmen. This eastern journal provided commentary on the deteriorating conditions of wildlife in the West. Grinnell's editorials concerning wildlife protection and preservation influenced and facilitated such legislative efforts in Montana.[4]

While endorsing the passage of effective laws, Grinnell also stressed the importance of enforcement, stating that "laws alone can accomplish nothing." Compounded by the lack of enforcement machinery and adequate funding, the vastness of Montana alone made it difficult to implement wildlife legislation. Although the laws provided for stringent penalties, effective enforcement was practically nonexistent. The establishment of the Board of Game and Fish Commissioners in 1895, and the appointment of a state game warden in 1901, signified the state's acceptance of its responsibility to wildlife conservation and enforcement of protective laws.[5]

In 1900, the Game and Fish Commissioners printed in every newspaper in the state a public questionnaire regarding game and fish issues. The questions ranged from "Do you endorse the present game law as it stands" to "How many game birds and pounds of fish should be the limit per man per day?" Responses came from "men in all callings" and reflected sentiment concerning various wildlife laws. Most expressed dissatisfaction with the existing game laws, as W.H. Kelley of Quartz, Montana, who exclaimed "What law there is to

protect game in Montana is not adequate to the occasion. Sportsmen and citizens of the state do not take the interest they should in the protection of game."[6]

These comments bemoaned the disappearance of wildlife and echoed the concerns of James and Granville Stuart in the early 1860s. Morton Elrod, chairman of the Board of Game and Fish Commissioners, felt the letters clearly revealed "the sad condition of affairs in the state" and lamented that, "If ever a state needed protection for game and needed it badly, Montana needs it now. Without immediate legislation nothing can be done, and it will be too late in many respects."[7]

The 1890s and early 1900s "witnessed the lowest level of game numbers through most of Montana." Today, most fish and wildlife populations are healthy and thriving as the result of successful game management practices. Montana is one of the few states where wildlife issues and considerations are still a serious public concern and today has some of the strongest environmental laws in the Nation.[8]

K. Ross Toole wrote that, "one must still return to the land to understand what is good and satisfying about life in Montana." One symbol of the quality of life in Montana is the diverse fish and wildlife populations. Efforts towards wildlife conservation began in the nineteenth century when individuals recognized the detrimental consequences of the relentless advance of civilization and they took the initiative by writing legislation designed to protect wildlife. The beginning of the twentieth century found Montana with a

tradition of conservation on which to build a strong and effective fish and wildlife management program.[9]

ENDNOTES

[1]Aldo Leopold, Game Management (New York: Charles Scribner's Sons, 1936), p. 16.

[2]Roderick Nash, ed., The American Environment: Readings in the History of Conservation (Reading, Massachusetts, 1968), p. 3; Gene M. Gressley, West by East: The American West in the Gilded Age, Charles Redd Monographs in Western History No. 1 (Provo, Utah: Brigham Young University Press, 1972), p. 6. Most histories of the western experience discuss man's exploitation of natural resources and recently, Duane Smith in "My Profit, Your Land: Colorado Mining and the Environment 1859-1900" A Taste for the West, Duane Smith ed., (Boulder, Colorado: Pruett Publishing Company, 1983), p. 103, made the interesting observation that "to pose the now obvious question of the value of immediate profits over long-range environmental consideration imposes standards other then those under which the industry then operated."

[3]Clark C. Spence, Territorial Politics and Government in Montana: 1964-1889, (Urbana: University of Illinois Press, 1975), p. 198. A review of wildlife conservation histories of several states indicated similarities in the legislation; see Eugene T. Peterson, "Wildlife Conservation in Michigan," Michigan History 44 (June 1960):129-46; Norman Brydon, "New Jersey Wildlife Conservation and the Law." New Jersey History 86 (Winter 1928): 215-235; Evadene B. Swanson, "The Uses and Conservation of Minnesota Game 1850-1900," (Ph.D dissertation, University of Minnesota, 1940); James P. Blaisdell, "A History of the Conservation Effort in Wyoming and the Wyoming Game and Fish Commission to 1950." (Masters thesis, University of Wyoming, 1964; Henry Arnold Bennett, "Fish and Game Legislation in Iowa." The Iowa Journal of History and Politics 24 (July 1926): 335-444.

[4]The author reviewed Forest and Stream between the years of 1872 and 1895; John F. Reiger, American Sportsman and the Origins of Conservation (New York: Winchester, 1975), recognized Grinnell as one of the prominent individuals in regard to wildlife conservation.

[5]Forest and Stream, April 23,1885.

[6]Montana, Annual Report of Game and Fish Commission, December 1, 1900, (Helena: State Publishing Company, 1901), pp. 7-13.

[7]Ibid, p. 13.

[8]Elers Koch, "Big Game in Montana From Early Historical Records," The Journal of Wildlife Management, 5 (October 1941): 368; Mike Aderhold, "Looking Ahead," Montana Outdoors, 17 (March/April, 1986): 2-6; some of the Montana environmental laws include the Stream Protection Act and the Major Facilities Siting Act.

[9]K. Ross Toole, Montana, An Uncommon Land (Norman: University of Oklahoma Press, 1959), p. 256.

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